



THE FEDERAL REPUBLIC OF NIGERIA

NATIONAL INTELLECTUAL PROPERTY POLICY AND STRATEGY

FINAL DRAFT

AUGUST 1ST 2022

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VISION

Utilising Intellectual Property for Sustainable National Prosperity

MISSION

To promote a comprehensive and conducive IP ecosystem as catalyst for harnessing the full potential of IP for socio-cultural development and sustainable economic growth

STRATEGIC OBJECTIVES

- To strengthen legal framework for protection of intellectual property rights in Nigeria.
- To strengthen institutional framework for the administration and management of intellectual property rights in Nigeria
- To enhance generation and protection of intellectual property rights
- To promote and facilitate commercial exploitation of IP assets and technology transfer
- To strengthen the legal and institutional framework for enforcement of IP rights in Nigeria
- To develop the required human resources for the administration, protection, commercialization, and enforcement of IP rights
- To promote IP training, education and awareness

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LIST OF ABBREVIATIONS

ACC	Anti-Counterfeit Coalition
ADR	Alternative Dispute Resolution
ARIPO	African Regional Intellectual Property Organization
ARCN	Agricultural Research Council of Nigeria
BOI	Bank of Industry
CAC	Corporate Affairs Commission
CAMA	Companies and Allied Matters Act
CBN	Central Bank of Nigeria
EFCC	Economic and Financial Crime Commission
FCCPA	Federal Competition and Consumer Protection Act
FCPCC	Federal Consumer and Competition Protection Commission (FCCPC)
FHC	Federal High Court
FDAHS	Federal Department of Animal Production and Husbandry Services
FMARD	Federal Ministry of Agriculture and Rural Development
FMITI	Federal Ministry of Industry, Trade and Investment
FMST	Federal Ministry of Science and Technology
FUTA	Federal University of Technology, Akure
FUNAAB	Federal University of Agriculture Abeokuta
FARA	Forum for Agricultural Research in Africa
GDP	Gross Domestic Product
ICGEB	International Centre for Genetic Engineering and Biotechnology –
ICT	Information and Communication Technology
IITA	International Institute of Tropical Agriculture
IP	Industrial Property
IPRs	Intellectual Property Rights
IPTTO	Intellectual Property and Technology Transfer Office
INTERPOL	International Criminal Police Organization
LCCI	Lagos Chamber of commerce and Industries
LFN	Laws of the Federation of Nigeria
NACETEM	National Centre for Technology Management
NAFDAC	National Agency for Food and Drug Administration and Control

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NASC	National Agricultural Seeds Council
NAPRI	National Animal Production Research Institute
NESG	Nigerian Economic Summit Group
NBDA	National Biotechnology Development Agency
NCC	Nigerian Copyright Commission
NABDA	National Biotechnology Development Agency
NACGRAB	National Centre for Genetic Resources and Biotechnology
NIPRD	National Institute for Pharmaceutical Research and Development
NUC	National Universities Commission
NITDA	National Information Development Agency
NOTAP	National Office for Technology Acquisition and Promotion
NIAS	Nigerian Institute of Animal Science
NIPCOM	Nigerian Intellectual/Industrial Property Commission
NVRC	National Varieties Release Committee
PCT	Patent Cooperation Treaty
RMRDC	The Raw Materials Research Development Council
R & D	Research and Development
SMEs	Small and Medium Enterprises
SON	Standards Organization of Nigeria
TISC	Technology Innovation Support Centre
TETFund	Tertiary Education Trust Fund
TRIPS	Trade Related Aspect of Intellectual Property Agreement
TK	Traditional Knowledge
TM	Traditional Medicines
TTOs	Technology Transfer Offices
UNODC	United Nations Office on Drugs and Crime
UPOV	International Union for the Protection of New Varieties of Plants
WIPO	World Intellectual Property Organization

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CHAPTER ONE: INTRODUCTION

The development of this National Intellectual Property Policy and Strategy, started in 2020, arising from the collaboration between the Federal Government of Nigeria (FGN) and the World Intellectual Property Organization (WIPO). The process consisted of two phases. Phase I of the project, which was undertaken in 2020-2021, comprised the preparation of an inception/preliminary IP audit report to establish the status of IP country wide. The IP Audit Report examined the state of the IP system in Nigeria, focusing on the interface between the use of the IP system and the economic development of the country, through innovation and creativity. The Audit exercise also examined existing legal, administrative and enforcement structures related to IP as well as national policies and strategies related to economic, social and cultural development, pointing out weaknesses, strength and opportunities, and proposed measures to strengthen the institutions. Phase II of the project, which started in January 2022, entailed the elaboration of the IP Strategy based on the findings and recommendations of the Audit report. It is deemed necessary at this stage to update the audit report findings based on focus group discussions with stakeholders, meetings with relevant senior government and policymaking officials and institutions.

The draft National Intellectual Property Policy and Strategy, which is due for final validation, consist of the following six chapters:

1. Chapter 1: Introduction
2. Chapter 2: Situation Analysis
3. Chapter 3: Strategic Direction
4. Chapter 4: Policy objectives and Strategies
5. Chapter 5: Programs and projects
6. Chapter 6: Implementation Structure

The vision of NIPPS is utilizing Intellectual Property for Sustainable Economic Prosperity while the mission is to promote a comprehensive and conducive IP ecosystem as a catalyst for harnessing the full potential of IP for socio-cultural development and sustainable economic growth. The Vision and Mission of NIPP will be pursued through seven strategic objectives, nine policy objectives as well as several programs and projects. An implementation structure has been provided to ensure smooth coordination of the implementation of NIPPS in the short and medium term. It is assumed that the policy will be reviewed from time to time to take care of emerging IP issues, and that a separate implementation plan may be prepared aligned to the government's planning cycle.

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CHAPTER TWO: SITUATION ANALYSIS

2.1 Legal framework for the administration of intellectual property rights

2.1.1 Industrial property rights

Currently, Nigeria has legislations for the administration of patents, designs, and trademarks. Patents and designs are administered by the Patents and Designs Act, Chapter P.2 of the laws of the Federal Republic of Nigeria 2004, while Trademark matters are governed by common law and statutory provisions. The statutory provisions are regulated by the Federal Government through various laws such as the Trademarks Act¹ (TMA) and the Merchandise Marks Act²; albeit some elements of trademark protection are also contained in the provisions of the National Agency for Food and Drug Administration and Control Act³(NAFDAC), the Companies and Allied Matters Act⁴ (CAMA) and the Standards Organisation of Nigeria Act⁵ (SON). All aspects of trademark engagements other than the issues relating to common law rights are regulated by the Federal Government and therefore it follows that these laws have national application in their coverage.

However, currently there are no legislations for the administration of trade secrets, databases, integrated circuit, geographical indications, utility models or petty patents. For trade secrets, or confidential information, section 37 of the Constitution⁶ guarantees a form of privacy as a fundamental right. There are remedies under common law for breach of confidential information and privacy. There is no special legislation for data bases, but this is protectable under the Copyright Act. There is no special statute on integrated circuits, but they can be protected and registered as industrial designs. There is no special protection for geographical indications or appellations of origin.

2.1.2 Copyright and related rights

The Copyright Act Cap C.28 Laws of the Federation of Nigeria is the main source of the Nigerian Copyright Law. It makes robust provisions for copyright protection, administration and enforcement in Nigeria. Further, the Act makes provision for neighboring rights that cover performer's rights and protection of folklore in Nigeria. In line with the Marrakesh Treaty to facilitate access to published works by the visually impaired persons (the Marrakesh Treaty), the Act made provides for reproduction of published works in Braille for exclusive use of the blind and sound recordings made by institutions or establishments approved by the Government⁷.

¹The 1965 Trade Marks Act recodified as Cap. T13 Law of the Federation of Nigeria 2004

² Recodified as Cap. M10 Laws of the Federation of Nigeria 2004

³Cap. N1 Laws of the Federation of Nigeria 2004

⁴Cap. C20 Laws of the Federation of Nigeria 2004

⁵Cap. 14 Laws of the Federation of Nigeria 2015

⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁷ Section S, second schedule to the Copyright Act on exceptions to copyright control.

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The Law on copyright operates throughout the whole country being an Act of the Federal Government, copyright being on the exclusive list of the 1999 Constitution (as amended) on which only the Federal government could legislate⁸. It is important to note, however, that the Law also includes subsidiary legislations that the Nigerian Copyright Commission is empowered to make pursuant to its regulatory mandate⁹. The Act in Section 31 also protects the expression of folklore in Nigeria against reproduction, communication to the public by performance, broadcasting, distribution by cable or other means, adaptations, translations and other transformation when such expressions are made either for commercial purpose or outside their customary context.

2.1.3 Plant/Animal variety rights

The protection for plant/animal varieties is by a sui generis system, under the recently enacted PVP Act 2021 of Nigeria, which covers all genera and species. Apart from protecting plant varieties, the PVP Act 2021 encourages investment in plant breeding and crop variety development and establishes a Plant Variety Protection Office for the promotion of increased staple crop productivity for smallholder farmers in Nigeria. However, the PVP regulations will need to be developed in order to operationalize the PVP Act 2021. In addition, the Patents and Designs Acts also provide for the grant of patents for biotech inventions pertaining to plants and animals.

2.1.4 Traditional knowledge and traditional medicines

Traditional Knowledge (TK) and Traditional Medicine is not protected by patents, but there is protection for some TK as folklore under copyright. There is no deliberate policy in place and there is very low level of appreciation of the importance of such policy in the public sector as well as amongst organized private sector organizations.

2.1.5 International treaties, agreements, and protocols

- a. Industrial property rights:** For industrial property, Nigeria is a member of the WIPO, the Paris Convention for the protection of industrial property, the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks and The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Patent Cooperation Treaty (PCT). Though Nigeria's Industrial Property laws predates the TRIPS Agreement, they are substantially consistent with the fundamental provisions within the agreement. However, the absence of regulations for

⁸ The Act was enacted in 1988 as Decree No. 47. It was amended in 1992 via Copyright (Amendment) Decree No. 98 and 1999. Both amendments empower the NCC to regulate Collective Management Organization (CMO) and operate as an enforcement agency. The main Act and the amendments are now consolidated in Cap C.28 Laws of the Federation on Nigeria (LFN) 2004.

⁹ An example of such includes the Copyright (Collective Management Organizations) Regulations 2007 made pursuant to section 39(7) of the Copyright Act.

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protection of trade secret, data bases, integrated circuits, geographical indications, remains a challenge to conformity with TRIPs. Although there are some Bills at the National Assembly seeking to align Nigerian laws to her treaty obligations, the domestication of TRIPs into our IP landscape has been a source of doubt and controversy amongst stakeholders. Another area of treaty compliance is section 31 of Trademarks Act which seems to be at variance with Article 14.3 of TRIPs that provides for a three-year period after that filing date before failure to realize an intent to use is allowed as the ground for refusing the application. There is also the issue of lack of provision for the registration of service marks under the Act as against the provisions of Articles 15.1 and 16.2 of the TRIPs agreement.

- b. Copyright and related rights:** The International Treaties and Conventions related to copyright are: the Berne Convention, the Universal Copyright Convention (UCC), the International Convention for the Protection of Performers Producers of Phonograms and Broadcasting Organizations (Rome Convention) 1961, the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT), the Beijing Treaty on Audiovisual Performances, the Marrakesh Treaty and the Trade Related Aspect of Intellectual Property (TRIPs) Agreement. However, being international law, the impact of some of their provisions on Intellectual Property in Nigeria will only be to the extent of their domestication, which is a constitutional requirement in Nigeria. Unfortunately, some of these treaties have not been domesticated in accordance with Nigeria's constitutional requirement, and *ipso facto* have not become operative in the country.
- c. Plant Variety Protection:** With the enactment of the PVP Act (2021), Nigeria will now need to consider joining UPOV.

2.2. Institutional framework for the administration of intellectual property rights

2.2.1 Patents and Designs Registry (PDR)

The Patents and Designs Registry (PDR) is set up pursuant to the Patents and Designs Act.¹⁰ PDR is mandated to administer, protect, promote and regulate Patents and Industrial Designs System in Nigeria. In the administration of Patents and Designs Right, the PDR operates a pre-registration and post registration grant system. For the pre-registration, the PDR administers the grant of certificates for patents and designs for local patent applications and foreign/convention applications.¹¹ It grants Industrial Designs Right to textile and non-textile designs. For the post registration, the PDR grants Recordals, including renewal of rights,

¹⁰Chapter P.2 of the Laws of the Federation of Nigeria 2004

¹¹ Nigeria became a signatory to the Patent Cooperation Treaty in 2005 and the operations of the Treaty is meant to take effect from May 0, 2005.

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registration of assignments, licenses and mortgages of patents and designs right, change of particulars of patents and designs right after issuance of certificate. It also manages the Patents and Designs Database.

For the protection of Patents and Designs, it grants a limited period of monopoly to the applicant of these right within which there can recoup the cost of their investment in their intellectual creation, subject to payment of renewal fees when due. For promotion of Patents and Industrial Designs rights, the PDR organizes periodic sensitization programmes with the Universities and Intellectual Property Hubs on Intellectual Property. It also collaborates with WIPO, European Patents Office (EPO) and United State Trademarks & Patents Office (USPTO) to organize customized trainings on IP for different sector of the society depending on their needs and demand. The PDR also works with WIPO to establish , monitor and evaluate Technology and Innovation Support Centers (TISC) in Universities across Nigeria and recently in Innovation Hubs, these centers act as IP hub for these organization, to assist inventors within their ecosystem to search for prior art before filing for a patent , to build capacity in the area of patent drafting and general Intellectual Property knowledge and for harvesting of Intellectual Property created within their ecosystem. For the Regulation of IP right, the PDR has set up an Administrative Panel that meets periodically to hear and determine cases bordering on the violation of Patents & Designs Patentees resort to the Registry for intervention before proceeding to the Federal High Court. It is also partnering with the United States Embassy to organize an Intellectual Property Training for Judges in order to enhance their IP skills in handling matters pertaining to IP infringement. The Patents and Designs Registry has two Units: The Patents Unit and Designs Unit.

The Registry relies on the WIPO Distance Learning Programme to increase the IP knowledge of its staff and it collaborates with WIPO and other agencies to offer capacity building programmes to the public.

The largest sector for patent applications is pharmaceuticals while the manufacturing sector is the largest for designs. The fee structure is as follows: patents: convention N25,000, non-convention-N15,000. Textile designs N22,000, non- textiles design N20,000. Patent annuity fees are N8,000 while designs renewal fees are N12,0000. It is not likely that these costs can be a disincentive for the local or foreign applicants. There is no reliable statistics, but investigations suggest that a negligible percentage of local businesses seek patent protection abroad. About 90% of filed Patents in Nigeria are foreign/conventional

In compliance with the Patents & Designs Act, the supervising Minister in April 2019 granted an approval for the expansion of the scope of Patents & Designs Act to include utility models and business method patents for applications that disclose some degree of innovation or inventiveness but, however, do not meet the strict requirement for patentability. The guidelines for implementation are being worked upon.

Some of the current challenges and gaps facing the registry are:

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- a. The Registry undertakes only formal examination of patent applications. This is so because 90% of filed patents are foreign/conventional application and have been thoroughly examined at the Patent office located in the country of origin. This has been occasionally criticized at various fora in the Nigerian Sector that this examination system does not guarantee a proper disclosure and a fair basis for granting rights because there is no substantive examination of application. However, it should be noted that it is the inventors' responsibility to disclose only that aspect of the invention he intends to protect. Section 3(2) of the Patent and Designs Act provides for applicants **to make clear and complete disclosure**. In addition, patents can be nullified in courts for any insufficient disclosure or failure to meet the test for patentability.
- b. The PDR does not have substantive Patent Examiners who are experts in each field of technology. If substantive examination is introduced by an amendment to the Patents Act, the Registry must employ Patent Examiners who would possess expertise in each field of technology.
- c. The Registry is the only office in Nigeria that has a comprehensive database of filed and issued Nigerian Patents and Designs. Search on this database can be done by lodging an application at the PDR. The Registry is working towards making that database public and searchable within the eco-inventing system in order to add to a robust prior search for the inventing community.
- d. International Database does exist on the WIPO Patentscope platform, the TISC platform and PatLib platform of the European Patent Office. However, within the Registry, inadequate electricity limits prior search and the use of these platform effectively. In addition, request for patentability search by the eco inventing community and research Institute has been very low. The Establishment of the TISC platform initiated by WIPO and PatLib in Universities and Research Institute will go a long way to bridge this gap.
- e. In 2021, the PDR published two volumes of Patents and Designs journal. The PDR published 2 journals in 2022 and a third may be published in December 2022, subject to the release of funds by the Ministry. These Publications provide information on received and accepted patents and designs application and assist inventors by directing them to areas of interest and minimize cases of re-inventing the wheel
- f. The Patents and Designs Act allows an application for Patent to be made directly by the inventors as there is no restrictions on who can file a patent application. However, an applicant who chooses to employ the services of an agent or a third party for this purpose must ensure that such a person has the necessary expertise to handle such brief against a fair remuneration.
- g. The Administrative Panel has successfully conducted a number of hearings since its inception in 2019. Some case have been settled amicably while others have proceeded to the Federal High Court.

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- h. The Registry has thirty-five staff, however, this is subject to change as the Federal Civil Service Commission periodically employs new staff into the Ministry and existing staff also retires occasionally. Staff can also be posted to the Department and specifically the Registry on demand.
- i. Currently, the Registry is not an autonomous body. It is administered under the department of Commercial Law at the Ministry of Industries, Trade, and Investment (FMITI).
- j. The Nigerian Patent Registry is a Receiving Office for PCT applications. Guideline for receiving offices and further transmission to WIPO had been communicated to the Patent Office. It is also important to note that the Registry has in the past 7years received no direct request for a PCT filing from any applicant within the country.

2.2.2 Trademarks Registry

The legal structure of the Trademark Registry is derived from the provisions of the enabling Trademark Act establishing that office, setting out its functions and appointing the Registrar. These functions and powers are both administrative and quasi-judicial in nature. The main function of the Trademark Registry is to register and maintain the validity of trademarks, record any form of status change within a registered trademark dispensation and attend to administrative and quasi-judicial contentions arising from the process of trademark registration or validation. The office of the Registrar and indeed the Registry is national in operation and the application of issues arising from trademark matters are also federal in nature; meaning that rights obtained, and decisions made are applicable and enforceable within the length and breadth of the nation. The Trademark Registry has two divisions, viz: the Registry division, and the Opposition/litigation and certificate Division. Each division is headed by officers within the rank of as Assistant Registrar and both reports directly to the Registrar. Within the opposition/litigation and certificate division sits the “tribunal” in a quasi-judicial capacity to handle oppositions and other forms of contentions. The decision of the tribunal is deemed to be that of the Registrar and carries the weight of law. It is enforceable and appealable to the Federal High Court. Some of the shortcomings with the administration of trademarks are:

- a. Staffing:** The Registry is a non-autonomous arm of the Federal Ministry of Investment, Trade and Commerce. This position envisages that appointments into the Registry will be undertaken directly, not by the Registry, but rather through the pool of persons appointed under the auspices of the Federal Civil Service Commission, posted to the Ministry, and seconded to the Registry. This is a challenging situation because there have been cases where persons from other ministries with very limited knowledge of industrial property law have been appointed to head the Registry.

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- b. Automation:** Beyond the basic automation of the filing process, substantial levels of activities at the Registry are not automated. Though mindful of the need for automation, it is evident that funding constitutes a major challenge to achieving this goal. Automation and modernization will certainly defray some cost elements in trademark portfolio management. The capacity to manage the automated system is also a challenge.
- c. Communication:** Communication is a major issue at the Trademarks Office because the main means of communicating is through postage, which for all intent and purposes is outdated in this era. It is necessary for the office to incorporate a digital master server in its communication capacity that will incorporate the identities of all staff who have authority to communicate with external parties. For a start, official emails addresses should be made available to all staff, at least those of them that communicate with external parties. The official web site can also be utilized as a secondary platform for sensitization.
- d. IP Tribunal:** Though the Trademarks Act refers to “tribunal”, it does not expressly create same within the content of the Act. Nevertheless, references to tribunals are replete in the Trademarks Regulations. Practically, tribunals are only utilized in opposition matters. Currently, the Registrar is responsible for setting up the tribunal, albeit upon receiving the approval of the supervising minister. In the interim, the tribunal should be set up as a permanent unit within the Registry with the sole purpose of attending to opposition or other contentious matters. It must be independent to the extent that its decision is not subject to the scrutiny of the Registrar or indeed any other administrative officer within the ministry, of the input of the Registrar in its decisions. More importantly, the tribunal should not be composed of persons who have in their ordinary course of duty at the Registry dealt with issues on which the tribunal has been called upon to decide.
- e. Accreditation of Agents:** The Registry has in place a system of accreditation of agents.

2.2.3 Nigerian Copyright Commission

The Copyright Act establishes the Nigerian Copyright Commission as the main copyright institution mandated with the responsibility of administration and enforcement of copyright in Nigeria¹².

The administrative structure of copyright in Nigeria lies with the Nigerian Copyright Commission. The Commission which was established by the Copyright Act and inaugurated in 1989, is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name¹³. The Copyright Decree which was amended in 1992 and in 1999 transformed the Commission from an administrative agency to a regulatory and enforcement agency with additional

¹² The NCC was inaugurated as a Council but became a Commission in April 1996.

¹³ Section 34(1) Copyright Act.

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powers to prosecute copyright offences. In essence, it is an autonomous agency though placed under the supervision of the Federal Ministry of Justice. The Minister is empowered under Section 51 of the Copyright Act, to give directives of a general or special character with respect to any functions of the Commission. It is also worth noting the fact that the Senate Committee on Judiciary, Human Rights and Legal Matters and the House Committee on Justice, on behalf of the respective arms of the National Assembly, exercise oversight functions on the Federal Ministry of Justice and by extension, the Departments and Agencies under the Ministry, including the Commission¹⁴. This oversight function may be carried out through periodic visits and interactions, from time to time, with the Departments and Agencies.

The Commission is supervised by a 12-member governing board appointed by the President of Nigeria on the recommendation of the Supervisory minister. It is headed by a Chairman who shall be a person knowledgeable in copyright matters appointed by the President¹⁵. Other members of the board are the Director General¹⁶, one representative¹⁷ each from the Federal Ministry of Justice, the Federal Ministry of Education, the Nigerian Police Force and the Nigerian Custom Service¹⁸. The remaining members are six people appointed by the Minister who represent as far as possible authors in the creative industry¹⁹. The day-to-day management of the Commission is vested in the Office of the Director General (DG) who is appointed by the President on the recommendation of the Minister²⁰.

Administratively, the Commission is divided into eight (8) Departments. These are: Administration; Accounts and Finance; Planning, Research and Statistics; Legal; Operations; Regulatory; Public Affairs and the National Copyright Academy. For administrative efficiency, the Commission has four (4) Units. These are: Anti-Corruption & Transparency Unit, Information & Communication Technology (ICT) Unit, Internal Audit Unit and Procurement Unit. Each department is headed by a Director who reports to the Director General. Offices headed by senior officers, are established across the country for effective administration and for the presence of the Commission to be felt across the country. There are 14 of such offices operating in 14 states across the country. The Head office of the Commission is at the Federal Secretariat in Abuja. According to Section 34 (3) of the Act, the mandate of NCC include:

¹⁴ This oversight functions may be carried out through periodic visits and interactions, from time to time, with the Departments and Agencies.

¹⁵ Section 35(1) (a) Copyright Act.

¹⁶ Section 35(1) (b) *ibid*.

¹⁷ Note that representatives from the Ministries must not be below the rank of Director. The representative of the Police must not be below the rank of the Commissioner of Police while that of Custom must not be below the rank of a Comptroller of Customs. (Section 35(1) (e), (f) and (2) of the Copyright Act.

¹⁸ Section 35(1) (b)-(f) *ibid*.

¹⁹ These are; literary works, artistic works, musical works, cinematograph films, sound recordings and broadcast. Section 35(g) (i)-(vi) *ibid*.

²⁰ Section 36(1) (2) *ibid*.

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- a) Be responsible for all matters affecting copyright in Nigeria as provided for in this Act;
- b) Monitor and supervise Nigeria's position in relation to international conventions and advise Government thereon.
- c) Advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country.
- d) Enlighten and inform the public on matters relating to copyright.
- e) Maintain an effective data bank on authors and their works; and
- f) Be responsible for such other matters as related to copyright in Nigeria as the Minister may, from time to time direct.

Some of the key features of the commission are:

- a. Funding:** Funding for the Commission is provided by the Government. Although, the Commission generates income through fees paid through some of its schemes like the Copyright Notification Scheme, licensing fees to operate Optical Disc Plant and Collective Management Organization etc., all is remitted to the purse of the Federal Government, as it does not enjoy any financial autonomy. NCC lacks adequate budgetary allocation and does not have the authority to use the generated revenue. Insufficient funding is a major challenge confronting the NCC. It is recommended that efforts should be made to creatively engage local and international development partners, Civil Society Organizations and even right owner's association for grants and financial assistance to enable it carry out its mandate²¹. A trust fund for the protection of the creative industry could be established through these means²². In addition, the possibility of engaging the appropriate committee of the National Assembly for more budgetary allocation to NCC from the national purse through lobbying during national budget preparation exercise should be explored.
- b. Staffing:** The Commission is empowered by the Copyright Act "to appoint such other staff as it may determine"²³, and "to pay its staff such remuneration and

²¹ The Commission has benefited from interventions from this source in pursuing its statutory mandate in times past. For instance, a Survey on the State of Piracy in the Nigerian Copyright based industry was carried out with support from the Ford Foundation in 2006. Right owners' associations have also rendered assistance to the Commission in terms of funding support for some of its activities in times past.

²² It is important to note that similar schemes tagged Nigerian Police Trust Fund and Lagos State Security Trust Fund had been established successfully by the Federal Government and Lagos State Government with the enacted of the Act creating it on 24th June 2019 by the Federal Government to support the police, and the Lagos State Government via Lagos State Security Trust Fund Law No. 28 of 2007 to support the security agencies in the state. The Fund particularly in Lagos State is currently having an appreciable positive impact in equipping the police and other security agencies. Contribution for the Fund in Lagos came mainly from the big corporate players in Nigeria's organised private sector and individuals.

²³ Section 36(3)(a) Copyright Act.

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allowances as it may, from time to time, determine”²⁴. This means that NCC can recruit staff as and when needs arise at will. In actual practice however, the Commission does not have the liberty to recruit at will, as the exercise is subject to obtaining government permission. In terms of capacity building, NCC has the Copyright Institute. It also relies a lot on the WIPO Distance Learning Programme to increase the IP knowledge of its staff.

- c. Copyright Notification:** The Commission has introduced the Copyright Notification Scheme in pursuit of its statutory mandate. Authors of works in which copyright subsist, are enjoined to “notify” the Commission through an exercise of registration of such works. This is done through filling the appropriate form on oath as author and submission of two copies of the work to the Regulatory department of the Commission upon payment of a token fee. Certificate of notification is issued to the author²⁵. The notification exercise is however not compulsory.
- d. Folklore:** The task of protecting and administering folklore is vested in the Nigerian Copyright Commission in Section 32 of the Copyright Act. And anyone who without the consent of the Commission uses an expression of folklore in a manner not permitted in Section 31 shall be in breach of statutory duty and liable to the Commission in damages, injunction and any other remedies as the court may deem fit to award in the circumstances. Violations of expression of folklore is criminalized in Section 33. A court before which the said offence is tried may order that the infringing or offending article be delivered to the Commission. However, stakeholders note that the Commission has not given any serious attention to folklore administration, which requires a lot of study and research to establish its IP asset status and also to have information that will guide in mapping out appropriate strategy that will aid the Commission in discharging its statutory mandate in respect of folklore.

2.2.4 The Plant Variety Protection Office

The Plant Breeders Right Office is a semi-autonomous institution under the National Agricultural Seeds Council (NASC) that will be oversighted by the NASC Board. The Board Chair and other members (all four in number) are appointed by The President. The NASC Board also comprises of other key stakeholders from government and private sector as well as farmer organizations. The NASC Board will approved the appointment of the Registrar of the PVP office upon the recommendation of the DG NASC. In addition- to the Board, there is the PVP Advisory Committee with members from the Ministry of Agric, breeders’ association, seed association, farmers association, university, Attorney General’s office, NOTAP, Quarantine, Biosafety Management, Biotech

²⁴ Section 36 (3)(b) *ibid*.

²⁵ Being a member of the Berne Convention, the Notification Certificate does not confer copyright on the work.

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Development, Crop Variety release, Registrar of Trademarks, Patents and the PVP Registrar. As per the PVP Act 2021, the mandate of the office, shall include: grant breeder's rights, maintain a register and provide information on plant breeders' rights issued in Nigeria, facilitate transfer and licensing of plant breeders rights, collaborate with local and international bodies whose functions relate to plant breeders rights, and perform any other functions as are necessary for the furtherance of the objects of this Act.

The office is to be funded through the PBR Development Fund, which is provided for under the Act. Sources of funds to the PBR Fund include fees payable under the PVP Act and any donation or grant from the government or any other person. The fund shall be applied for: the development and promotion of the plant breeders' rights; training of plant breeders on matters concerning plant breeders' rights; establishment and maintenance of variety collection and database; and any other activity relating to the administration of the Act. The Nigeria PVP Office is still in its infant stage of establishment.

2.3 Generation and protection of intellectual property rights

2.3.1 Policy Incentives for promoting generation and protection of innovation

Amongst the main policies that recognize that importance of generation, protection and commercialization of intellectual property are the Science, Technology and Innovation Policy (2012), the National Digital Economy Policy and Strategy (2020-2030) and Institutional IP Policies.

Science, Technology Innovation Policy (2012)

This is the second government policy on science, technology and innovation coordinated by Federal Ministry for Science and Technology (FMST) and is being implemented by universities and research institutes. It replaced the first National Science and Technology Policy of 1986, which was reviewed in 1997 and 2003. The key notable- feature of the STI Policy (2012) is the emphasis on Innovation, which has become a global tool for sustainable development. The STI Policy (2012) has eight policy objectives, out of which, the following three are directly related to intellectual property:

- a. Facilitate the acquisition of knowledge to adapt, utilize, replicate and diffuse technologies for the growth of SMEs, agricultural development, food security, power generation and poverty reduction.
- b. Encourage and promote creation of innovative enterprises utilizing Nigeria's indigenous knowledge and technology to produce marketable goods and services.
- c. Support mechanisms to harness, promote, commercialize, and diffuse locally developed technologies for the production of globally competitive goods and services that intensively utilize Nigeria's raw materials

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In terms of Intellectual Property Rights, the STI Policy (2012) recognize the need to create and protect Intellectual Property Rights (IPR) and give recognition to inventors to stimulate the development of inventions as well as create wealth for Intellectual Property (IP) owners and the country. This would be realized through the following strategies, amongst others:

- a. Ensuring adequate recognition for Intellectual Property, promotion, and protection of inventions, traditional knowledge, indigenous technology, and other intellectual assets.
- b. Building local capacities in Intellectual Property management for effective transfer of technology.
- c. Promoting awareness programs on Intellectual Property at all levels of education.
- d. Establishing and strengthening technology transfer offices for effective management and utilization of Intellectual Property Rights (this should be replaced with technology) note that NOTAP is a technology transfer office and should not assume the role of an IP office, instead IP office should be empowered to deliver on their respective mandates, resting the functions of IP offices in NOTAP will create more gaps in the system as they do not possess the expertise to deliver on these. This is why each IP office has its own mandate. in all universities, polytechnics, research institutes, and other public and private organizations.
- e. Providing appropriate incentives to inventors to stimulate creativity and innovations.

National Digital Economy Policy and Strategy (2020-2030)

The National Digital Economy Policy and Strategy (2020-2030) has been developed to reposition the Nigerian Economy to take advantage of the many opportunities that digital technologies provide. It was prepared by the Federal Ministry of Communications and Digital Economy (FMoCDE) and it is based on the following FMoCDE's 8-pillars for the acceleration of the National Digital Economy for a Digital Nigeria: Developmental Regulation; Digital Literacy & Skills; Solid Infrastructure; Service Infrastructure; Digital Services Development & Promotion; Soft Infrastructure; Digital Society & Emerging Technologies; and Indigenous Content Development & Adoption. Pillar number 7 (Digital Services Development and Promotion) focuses on the development of a vibrant digital ecosystem that supports Innovative Driven Enterprises (IDEs) and Micro Small and Medium Enterprises (MSMEs) in a way that engenders innovation. The main objectives of this pillar include, which are listed below, will require intellectual property:

- a. Support for the creation of Innovation Driven Enterprises and digitally enabled MSMEs.

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- b. Facilitation of mentorship and funding programs to support innovation driven enterprises and digitally enabled MSMEs.
- c. Enabling innovation driven enterprises and digitally enabled MSMEs to participate in the government procurement process, through the introduction of a bimodal procurement system to accommodate them.
- d. Facilitate the launch of Digital Innovation and Scale-up Centers (DISC), IT and innovation hubs around the country to target digital innovations and the scale-up of digital startups.

The Economic Sustainability Plan 2020

The Plan which was introduced after the completion of the Audit Review in 2020 is aimed at stimulating the economy to recovery from the impact of the COVID-19 pandemic. It is a stop-gap plan introduced pending the formulation of a more robust National Development Plan 2021-2025. Two key aspects of the Plan relevant to the creative industries are: support to Micro, Small and Medium Enterprises which include conditional grants and interest free loans; and implement programs in the area of education for continuous learning.

National Development Plan 2021-2025

This is a medium-term blueprint aimed to unlock Nigeria's potentials in all sectors of the economy for sustainable development designed to be achieved through six broad objectives relevant to the creative industries. These are: economic diversification; investment in infrastructure; security and good governance; educated and healthy population; poverty alleviation; and economic and social development across states.

Institution IP Policies

Section 2 and Section 14 of the Patents and Designs Act, 1970 makes provisions for ownership of inventions/designs by employees and persons who had commissioned the initial works that resulted in Patent and/or Design rights over them. In the same vein , the Patents and Designs Acts vests ownership of inventions from universities and research institutes in the respective Universities and Research Institutions provided the inventing activities were done during the course of employment using the available resources and data , however the individual who carried out or was engaged to carry out the inventing activity is entitled to have his name mentioned in the Patent or Design right application as such and he is also entitled to a fair compensations . The problem here is what percentage of the profit can be called 'fair compensation'.

Apart from the provisions of the Patents and Designs Act, some universities and research institutions have IP policies that give further guidance with regard to inventions created within those institutions. The Committee of Vice Chancellors recently adopted a Model IP policy for Nigerian universities. The policies govern

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ownership and reward for the employee inventors. Ownership of patent rights in inventions derived from research of universities and research institutions funded by the private sector depends on agreement between the parties. Similarly, ownership of inventions created in universities and research institutions arising from research undertaken in collaboration with foreign research institutions is governed by the contracts between the parties. Where there is no written contract, the governing law under the Patents and Designs Act is that the right belongs to the commissioning organization.

In organizations where there is an IP policy, the benefit sharing formula between the researchers, their department, faculties, and the institutions are spelt out. But in most organizations, this is lacking as they do not have any IP policy. Potential commercialization by partners is not done often but intermittently, researchers are connected to industry through university exhibitions, fairs, joint industry boards, special university sponsored commercialization **fora**, advertising through media. Information about IP laws, IP mechanisms, costs etc. is disseminated on academic journals, websites, and the like. It is not easy to secure assistance/support from the relevant institutions, but the national IP office relate well with universities and research institutes.

Nigerian universities today use patents as part of the criterion for promotion, rather than only publication and this was urged on the universities by the National Universities Commission (NUC) and the FMST. This provision can be strengthened by the Model IP Policy for Nigerian Universities and the National IP policy.

2.3.2 IP education and training

- 1. Teaching of IP at the universities:** Intellectual Property Law is an elective course in the Nigerian University. IP law is also taught at the Nigerian Law School. Several law faculties provide training for up to doctorate level for IP. There is no data available about the number of IP professionals have been trained internally or abroad. However, there are lot of Intellectual Property Lawyers and practitioners in Nigeria and the numbers keep increasing. The WIPO Academy provide yearly scholarships for developing countries to participate in IP related online courses, Summers schools and to study Masters in Intellectual Property abroad. A lot of Nigerian Students and mid-level career lawyers have also benefits from this. The first PhD in IP abroad was in the early 1990s but since then, at least 10 PhD have been produced by Nigerian universities whilst over 20 have been produced abroad. However, aside from law, IP education hardly feature in the curricula or content of disciplines.
- 2. Training on Industrial property:** The Trademarks, Patents and Designs Registry, Ministry of Industry, Trade and Commerce, the Nigerian Institute of Advanced Legal Studies (NIALS), IP Groups such as the SBL-NBA, IPLAN, ACC, NOTAP, the National Agricultural Seeds Council and institutions within the Private Sector have been providing some training on IP. The Trademarks,

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Patents & Designs Registry offer training programs with the support of WIPO, Japan Patent Office, USPTO, WTO, EPO, CIPO, SIPO, NIPO, ARIPO. The USPTO through the US Embassy Nigeria do offer periodic training to Judges. In addition, through the auspices of Technology Innovation Support Centre (TISC) which is a WIPO initiative, the Patents and Designs Registry offer trainings on the use of Patent databases, Patent Drafting and other IP related services on demand to those who use the registration system. It also sets up TISC centers and PATLIB in Universities. PATLIB is an initiative of the European Patent (EPO) which essentially is meant to provide access to patents information to the eco-inventing system. The essence of the TISC and PATLIB is to provide a platform for researches within the eco inventing system to search prior art and be well informed of other existing inventions/related art before committing to research and development. Institutions who have signed to host the TISC center and PATLIB will benefit from other related IP services offered by these platforms. The national IP offices conducts IP training programs from time to time to Stakeholders and Students, although there is no certification. They Registry also encourages Universities and Research Institutions to set up IP Commercialization Centers or TTOs within their institutions. It also encourages them to host the TISC and PATLIB within these centers as it could leverage on the vast resources and information available on these platforms to sensitize their eco – inventing system and these makes the institutions easily visible for other collaborative activities from the IP Offices, Local and International Stakeholders

3. Although, there is no certification of continuous education mandatory for professional development, the Section of Business Law of the Nigerian Bar Association (NBA-SBL) is collaborating with NIALS and Queen Mary University towards creating a diploma awarding Continuing Education Programme (CEP) platform for each of the various specialized practice areas within the section. IP is one of the established committees within the NBA-SBL.
4. **Training for the creative industry:** Nigerian is amongst the few African countries that provide training for the creative industry. There is the Nigerian Copyright Institute and tertiary institutions. The establishment of institutions such as the Abuja College of Culture and Tourism aimed at becoming the premier tourism and cultural college serving West Africa sub-region, as well as the National Institute of Culture and Tourism to conduct research, plan and oversee education and training for the culture and tourism sector, as envisaged in the Nigerian Tourism Development and Master Plan should be an opportunity for introducing copyright and creative industries programs for the benefit of the industry players. Workshop and seminars on Industrial Design registrations is periodically conducted by the Patents and Designs Registry for the creative society and fashion industry.

2.3.3 IP awareness

Although the level of IP awareness differs from sector to sector, (e.g., universities, business, research institutions, government departments, local government), it is nonetheless, low across all sectors. No country-wide IP awareness evaluation exercise has been undertaken and there is no strategy in place for enhancing IP awareness in Nigeria. However, the citizens have a sense of fairness such that they will condemn IP theft when a creative/inventive person lost his investment to a third party who reaps where he did not sow. Some Nigerians see the high cost of books, software and medicines as a perceived disadvantage of IP. The possible growth of Nigeria's creative industries is a perceived advantage of IP.

The IP awareness among stakeholders in Nigeria is very low and it is a key factor in the obvious gulf that exists between the IP offices and the owners of right. Without synergy between the two parties, effective enforcement will always be challenging as right owners either neglect to register their IPs until it is lost to infringements or neglect to enforce their IPs against an infringer until it becomes too late. It is recommended that the Copyright, Trademarks, Patents and Designs Offices need to embark on a robust IP awareness campaign. Outreach programmes to researchers, academics, politicians, chambers of commerce etc. and even the right holders need to be organized to tackle poor IP awareness in the country. Efforts in this respect could be geared towards developing and implementing target-oriented IP popularization programs; organizing or taking part in programmes such as exhibitions in cooperation with institutions such as chambers of commerce to show the benefit of the IP system. Also, assistance could be given to research and academic institutions in developing IP policies and establishment of IP management Units. Journalist also could be encouraged through sensitization training on IP and the use of mass media for IP awareness. It was recommended that creating awareness should be done with a clear understanding and direction of the national policy thrust. In this regard the two main IP Offices to wit Copyright, Trademarks Patents and Designs Registry should be fully engaged and involved.

2.3.4 Use of IP information for research and development

The Patent Registry is in charge of registration and grant of Patent Rights to inventors. It has a comprehensive database available both on the Patent Register and at the compactus for storing of historic files. According the Patents and Designs Act. The Act provides that these data and the Patent Register shall be made available to the Public. However, it has been observed that Universities and Research Institutions rarely request for accessibility to these information for use in their research and development of new inventions and prototypes. Universities and research institutions hardly use technology and patent information systems for research and development. There is no data base of the R&D being conducted by universities and research institutes, neither is there any data base of the results of the findings. In the same vein Businesses and SMEs hardly use technology and

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patent information systems for innovation and the acquisition of technology. This could be due to lack of awareness on the usefulness of Patent Information.

2.4 Capacity and institutional support framework for technology transfer and commercialization of IP rights

2.4.1 Valuation of IP assets

There is not much capacity in place for assessing the value of IP assets. There are few experts on IP valuation, but they are not known to most people. It is obvious that capacity on valuation of IP is not well developed but the TTOs are beginning to play their roles. It is presently done in conjunction with the Entrepreneurship and skill development Centre. Public companies must be encouraged to assess IP assets when preparing financial statements. The audit and accounting guidelines for companies seek to promote IP valuation as part of the audit process but this is hardly ever conducted. Industries do not carry out regular valuations of their IP assets. IP assets were sometimes considered in the privatization of publicly owned companies. IP valuation is an area of IP that requires a large dose of expertise; accordingly, it was recommended that this should be incorporated into the curriculum of tertiary institutions.

2.4.2 Technology Transfer Offices

There is an increase in the number of universities that have TTOs since the Patents and Designs Registry and NOTAP conduct capacity building programmes on the need to and how to run TTOs. In some universities, it is headed by a Deputy Director whilst some universities TTO are headed by professors. Most TTOs do not have a full career structure, and many are understaffed but more have permanent staff. Some TTOs operate under the Vice Chancellor's office whilst others operate under the Planning, Technology Transfer and Information Management Department and are supervised by the Deputy Vice Chancellor. In many universities, a committee on commercialization of research products makes recommendations to the university on options to be taken on specific innovations and patents. The universities reach out to identify interested partners. The Model IP policy for Nigerian Universities sets good standards for universities to adopt. However, there is no record that Nigeria has conducted a technology needs assessment.

Very few TTOs have a dedicated system for database search and patent specification drafting. WIPO in collaboration with the Patents and Designs Registry has organized workshops on Patent Drafting which was attended by some of the Heads of the TTOs. Sadly some were unable to participate as they complained of lack of funds to sponsor their trip. However, Online training on Patent Drafting is also available under the WIPO Academy online DL courses to further build capacity on Patent Drafting. The TISC and PATLIB projects has also been

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introduced to ensure all the TTOs have adequate training on Patent Database searches and related IP areas .

2.4.3 National Office of Technology Acquisition and Promotion (NOTAP)

The commercialization of IP remains the duty of the inventors and IP holders. However, NOTAP serves as a National Commercialization Agency. It is an autonomous government agency primarily empowered to evaluate and register technology transfer agreements; commercialize R&D research; promote innovations and assist in the registration of patents amongst other responsibilities. NOTAP monitors the licensing of IPR from foreign entities to Nigerian entities and promotes the development of and transfer of local technology. However, these licenses must be registered with the Patents Registry, so as to enable effective documentation and upgrade of the information on the Patent Database.

NB Please note that NOTAP does not manage Patent Information. It does not have the patent database to manage. The Patent database is managed by the patent registry and has been in existence since the inception of the Patent Registry in year 1930. This means the Patent Registry information on patent filed as far back as 1930 before even Notap came into existence in 1995

NOTAP was established under the Act²⁶. The principal officers are the Director General and six (6) other directors coordinating various departments: Technology Transfer and Registration; Corporate Planning; Consultancy Services; Human Resources and Finance Management; Technology Innovation and Commercialization; and Technology Acquisition and Research Coordination. The Director General reports to the Minister of Science and Technology through the governing Council that is headed by the Permanent Secretary in that ministry. Being autonomous, this agency can recruit staff directly.

The National Office for Technology Acquisition and Protection NOTAP is equipped to advise and assist in negotiating the facilitation of technology licensing between different stakeholders. NOTAP does that as part of its mandate. Some institutes have several MOUs with various other institutions. NOTAP and the Ministry of Trade and Industry have been helpful in assisting universities to draft and file patents free of charge. Nigeria has professional service providers with relevant licensing-related expertise.

²⁶ National Office of Technology Acquisition and Promotion Act. Cap. N62 Laws of the Federation of Nigeria 2004

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2.4.4 Hubs and incubation centers and industrial parks

Nigeria has numbers of Innovation hubs. Nigeria has incubation centers in each geopolitical zone.²⁷ Some universities/institutes have a science and technology park, some have it in the university master plan that is yet to be implemented. When presented to incubation centers, they assist the individual or firm to facilitate financial and sometimes facilities (equipment) support. The Raw Materials Research Development Council (RMRDC) has extensive research findings on many local raw materials.²⁸ RMRDC tries to find such products or link prospective inventors to relevant industries. They conduct regular exhibitions which serve as meeting point for all stakeholders. There is some government funding through TETFUND and BOI. A number of incubation centers encourage records, research and use of the tradition knowledge and medicine. However, the following challenges were- observed.

- a) The infrastructure or facilities to support researchers and inventors with product or prototype development is very weak and expensive. Many have to produce their prototypes abroad.
- b) Most universities do not have technology parks. No record is available of the success of any institute's tech park.
- c) Whereas there are few success stories of licensing agreements between universities and local industries. It is not certain how many IP commercialization professionals are currently practicing in Nigeria. Furthermore, commercialization professionals are mostly restricted to people with training in law and the legal profession. Capacity is being built for persons with scientific background who can draft patents. The profession is mainly regulated by the national bar association and the Council of Legal Education.

2.4.5 Financing the commercialization of IP assets

The main support for funding the results of R&D for universities and institutes is the Tertiary Education Trust fund (TETFUND). Fund can be accessed with a well written proposal. The Bank of Industry (BOI) is specially instituted to support such ventures. Other industries are also encouraged to participate. The business plan

²⁷<https://www.vanguardngr.com/2020/02/breaking-buhari-commissions-industrial-hub-in-ondo-eulogises-akeredolu/>; <https://guardian.ng/business-services/nigeria-signs-2billion-industrial-parks-agreement/>; <https://www.premiumtimesng.com/news/headlines/224772-osinbajo-unveils-nigerias-20-billion-gas-industrial-park.html>;

²⁸RMRDC has promoted and supported the following clusters in different locations in the country: Leather cluster, Kano; Cassava Processing, Umuahia; Spices Cluster, Federal University of Technology, Owerri Talc Processing cluster, Kagara; Mushroom Cluster Kaolin Processing Cluster; Milk Collection Centre Yola; Sericulture Cluster, Ado Ekiti; Cashew processing Cluster, Kogi, Federal University of Agriculture, Abeokuta, Ikakumo Ondo State; Fruit juice project, Kaduna; Phosphate processing Cluster, Sokoto; Moringa processing, Clusters; Melon Shelling Cluster, Lafiya, Nasarawa State. See <https://rmrdc.gov.ng/raw-material-SME-development.php>; <https://rmrdc.gov.ng/research-reports.php>; <https://rmrdc.gov.ng/local-rm-content-development.php>;

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of the products is considered in making decisions. It is doubtful if IP actually plays a part in the decision-making process. There appears to be an attempt by the Central Bank through its current intervention funds, but these are still early days hence its success cannot be assessed. IP as collateral is in its infancy in Nigeria. IP assets are hardly recognized by financial institutions in Nigeria in assessing business plans, but TETFUND and the Bank of Industry are increasingly becoming aware of IP assets whilst a couple of banks are beginning to consider this. Financing institutions and venture capitalists rarely promote monetization or securitization of IP e.g., current royalty or revenue stream. Some are concerned about possible enforcement and piracy. There are divergent views on whether joint venture or venture capital is preferred based on shared risk. Some suggest that it depends on the valuation of the IP.

2.4.6 Support structure for commercialization in the creative industries

The Creative industry in Nigeria

The creative industry (at times refers to as the Copyright Based industry) in Nigeria is multi-sectoral and includes the following: the Film Industry, the Music Industry, the Software Industry, the Visual Arts, the Arts and Craft Industry, the Fashion Industry, the Book Publishing Industry, the Broadcasting Industry, and the Telecom industry. The growth trajectory of these sectors is diverse as some sectors are more impactful than the others in consideration of their contribution to the growth and development of the Nigerian economy. The movie and music sector are more prominent than others.

Whereas the creative industry has huge potentials to contribute to national economic growth and development particularly in economic diversification, employment, income generation etc., but the economic impact of these industries has not really been studied. A study of the economic contribution of the copyright-based industries to national economic growth and development needs to be undertaken to appreciate the huge potentials of this sector, and the vital role it could play in facilitating the realization of government policy goals. Lack of statistical evidence to show the contribution of the creative industries to the economy was identified as a key reason for the inability of the government and stakeholders in this sector such as NEPC, NITDA and NBC to effectively engage in the promotion and growth of the creative industries relevant to their statutory mandate as even statistical and empirical data for mapping appropriate initiative is very rare to come by. This challenge is exacerbated by the fact that there is still inadequate policy framework to support creativity and innovation for the creative industries.

Efforts towards making the creative industry more relevant to national development agenda, has mainly been from the Federal Government. Although there are appreciable efforts at subnational level in form of initiatives from some of the States government, a lot still has to be done by the states and local governments in promoting creative industry being closer to the key players in the industry and strategically positioned to identify and reach out to them. A means of doing this is to

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give them robust recognition by identifying the vital role they can play and the benefits they stand to gain through promoting and supporting the creative industry in their domain in any national policy aimed at addressing the issue. However, the film sector expressed concern about the transformation of the Nigerian Film Corporation to a Commission for regulating the film industry. In their view, existing regulatory agencies in the industry are sufficient; too much intrusion of government into the industry in the guise of regulation can hinder the growth and development of the industry.

Collective Management Organizations:

There are three CMOs currently operating in the country by the Copyright Commission. They are: the Music Copyright Society of Nigeria (MCSN) for the music industry, the Audio Visual Rights Society (AVRS) for the film industry and the Reproduction Rights Society of Nigeria (REPRONIG) for the book industry. Their establishment has strengthened the value chain of each sector of their operations. The regulatory framework and oversight by the Nigeria Copyright Commission minimizes the abuse of the operation of the CMOs. Some of the CMO's particularly, the MCSN has been paying royalties to its members. However, there are few challenges that need to be addressed. These include: reluctance of users of works to pay for use of works; the CMOs lack the necessary human capacity and infrastructure for effective and efficient operation; constant bickering and fighting among the rights owners in the music industry is big a challenge for effective operation of the CMO in the music industry; lack of proper initiative to proactively reach out to the users and making them to pay for the use of works and inadequate monitoring mechanisms on the detection/monitoring of collection and payment of royalties in line with global best practices which encourages plough backs. To address the above challenges, the following recommendations have been made by the stakeholders:

- a. Public enlightenment to sensitize users of works to their obligation to pay for use.
- b. The Copyright Commission through the Copyright Institute should develop training programs for staffs of CMOs for human capacity development by way of courses, seminars and workshops. Assistance could also be obtained in this respect from WIPO Academy and collaborations with local and international development partner organizations.
- c. CMOs need to proactively initiate effective strategies that will facilitate enforcement of their rights and payment by users of their works.
- d. The Copyright Commission needs to effectively monitor the operation of the CMOs ensuring strict adherence to proper corporate governance practices.
- e. The CMO's needs to use adequate and appropriate technology for operation to enhance operational efficiency and effectiveness.

Government support agencies for the creative industries

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There are a number of Agencies of the government that provide business support to enterprises including the creative industries. These include the Nigerian Film Corporation (NFC) for the film industry, National Council for Arts and Culture (NCAC) for the creative industry, the Nigerian Export Promotion Council (NEPC), and the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN). While striving to make significant contributions to the creative industry, these organizations face the following challenges: financial constraints; lack of attention for the creative industry by NEPC; lack of awareness on the huge economic growth and development potentials of the creative industry even by government agencies; there is a perception of the creative industry that NCAC is more inclined to promoting culture than their national economic growth and development potentials. Furthermore, the Law establishing the National Film Corporation (NFC) was enacted in 1979 and some of its provision is no longer in tune with present day realities of the movie industry particularly in Nigeria. Finally, government efforts and intervention seem to be from the Federal Government alone. The states and local governments are also involved in the issue of business support of the creative industry though closer to the grassroots and better positioned to identify, nurture, and develop their local creative industry for wealth creation and employment generation. Some of the initiatives are highlighted below:

- (a) The Cross River State government's Tinapa Film Studio Infrastructure and Annual Calabar Carnival.
- (b) The Delta State Government Asaba Film Village and Leisure Park project to support the film industry.
- (c) The Adire Ogun Initiative of the Ogun State Government to promote the indigenous tie and dye (Adire) fabric at the Cultural Centre Abeokuta through the launching of the digital marketing platform to promote it to a global platform, and the newly introduced State Policy of making it the uniform for all public schools in order to promote its patronage.
- (d) The collaboration of the Osun State Government with Abeni Visual and Performing Art Institute to train youths across the State in various courses in Visual and Performing Arts.
- (e) The Lagos State Government Policy of providing interest-free loans to filmmakers. The recent implementation of this Policy is the N200 million special interest-free loan to 37 filmmakers.

Nonetheless, there have been efforts to provide financial support for the development of the creative industries in Nigeria from the private sector. One of such facilities is the Creative Industry Financing Initiative (CIFI) which is a long term and low interest financing loan scheme developed by the Central Bank of Nigeria (CBN) in collaboration with the Bankers Committee for entrepreneurs and investors. The funding targets creators in the fields of Fashion, Information Technology, Movie Production and Distribution, Music and Software Engineering announced in 2019. Actual implementation started with the release of the implementation modalities by the CBN in July 2020. However, there was a consensus on the lack of awareness of

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the newly introduced (CIFI), and that business support for creative industry in form of funding is still a huge challenge. Even when available it is very difficult to access.

One important issue which came out clearly in consultations with the publishing sector is the impact of government fiscal policies particularly, high import duties on the materials they use in their industry including paper and ink which are mainly imported. This makes the industry less competitive compared with their counterparts in some other countries.

2.4.7 Commercialization of traditional knowledge and traditional medicines

There are some commercialization activities on TK/TM at the National Natural Medicine Development Agency and NIPRD, which are already producing and selling some herbal products. NIPRD partners with the Nigerian private sector to produce standard herbal supplement from plant extracts for the treatment of diseases. These projects meet with the international standards in production and research of herbal medicine.²⁹ NIPRD is engaged in the production of Domestic Production of RUTF for the Treatment of Severe Acute Malnutrition in Nigeria.³⁰ NAFDAC has issued sale approval for the commercialization of some medical products predicated on TK/TM. There is the success story of NIPRISAN, a TK derived medicine to treat sickle cell. NIPRISAN is the extract of four kinds of plants in Nigeria³¹ was developed by NIPRD for the prophylactic management of patients with sickle cell disease.³² There have been issues with the agreements with Xechem, a US pharmaceutical company licensed to produce it but NIPRD is producing it at a fraction of the amount private company is producing it.³³ It is also one of the first herbal medicinal products in Nigeria to have been successfully developed, patented (a US patent was approved in September 1998), and passed through clinical studies.³⁴ Nigeria has some associations of TM practitioners e.g. National Association of Traditional Medicine Practitioners. The main barriers to the development of TK/TM include lack of awareness, biases, skills shortages, lack of access to finance, bureaucratic business regulations and no enforcement. Others are, improper documentation of Nigeria's TK/TM coupled with a lack of recognition/respect to those in the sector, and absence of policy to drive legislation, training and practices that articulate the importance of TK and Traditional Medicine Practice.

²⁹<http://www.niprd.gov.ng/fg-pledges-to-promote-herbal-medicine/>, accessed June 5, 2020.

³⁰<http://www.niprd.gov.ng/private-sector-engagement-on-rutfs/> accessed June 5 2020.

³¹<https://www.sbir.gov/sbirsearch/detail/352226>

³²<https://www.sciencedirect.com/science/article/pii/S0011393X01800394>

³³<https://www.vanguardngr.com/2015/12/fg-stops-commercial-sale-of-sickle-cell-drug-niprisan/>

³⁴<https://qz.com/africa/1547079/nigerian-scientists-patented-a-sickle-cell-drug-using-a-traditional-herbal-remedy-then-it-all-fell-apart/>.

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2.4.8 Commercialization of new plant varieties /animal breeders' rights

Nigeria has 18 research Institutes for crops out of which only One is for Cereals and One for Stored Products, One for Products Processing and 3 for Livestock made up of only NAPRI for all Livestock breeds, One for Trypanosomiasis research and One for Veterinary Research. In the past, the release of varieties has been coordinated by the National Varieties Release Committee (NVRC) that successfully releases varieties.³⁵ There are a couple of success stories relating to the licensing and commercialization of new plant/animal varieties. For animals, there are two varieties of chicken, NOILER, that has been fully commercialized by the developer, but this variety has not been registered whilst on the other hand, the FUNAAB ALPHA variety of chicken has been registered but has not been commercialized. There is also a success story of a cattle breed in Kano. The following challenges have been reported regarding commercialization of new plant/animal varieties:

- a. Nigeria encourages importation from International Breeders rather than encourage Breeders within the country.
- b. lack of awareness of possible IP rights is a major factor affecting growth.
- c. Inadequate support and encouragement for local researchers in the Universities and Research Institutes especially for animal breeds that is more capital intensive and generational than crops. Short time international support (2 to 5 years) for animal breeds that will take 8 to 15 years of selection.
- d. The costs of registering, enforcement and maintenance fees is a disincentive. Added to this is the length of time it takes to register the breed, or the company coupled with government regulations is a major problem. An animal to be registered must have passed through 6 to 9 generations of selection like in my Chicken and Pig breeds. Cost of testing across the country, monitoring and registration did not allow my Improved Indigenous Pigs to be registered.

Respondents suggested that breeders must be accorded a registration right with exclusivity for ten years. Research Institutes must be established, and adequate funding and staffing must be a priority. Agriculture related Industries for products processing and packaging in addition to a Centralized Semen Processing for all categories of Livestock must be established. The government must discourage the importation of breeds. There must be a serious effort at improving the staffing and funding of NACGRAB and NIAS.

2.5 Enforcement of IP rights

2.5.1 Legislative framework for the enforcement of IP rights

Enforcement of industrial property

³⁵<https://businessday.ng/agriculture/article/nvrc-releases-improved-wheat-variety/>.

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IP enforcement regulations are not consolidated into one statute in Nigeria. Rather, IP enforcements regulations are embedded in several statutes that aid the enforcement of IP rights in Nigeria. They include: Patents And Designs Act³⁶, Trade Marks Act³⁷, Copyright Act³⁸, Drugs & Related Products (Registration etc.) Act³⁹, Food & Drugs Act⁴⁰, Counterfeit & Fake Drugs & Unwholesome Processed Foods (Miscellaneous Provisions) Act⁴¹, National Agency of Food Drug Administration and Control Act⁴² and relevant regulations relating to NAFDAC, FCCPA, Merchandise Marks Act, Standards Organizations of Nigeria Act, and the Customs Act. The Administration of Criminal Justice Act applies to all criminal prosecutions. There are some non-IP specific that are relevant for the enforcement of IP rights such as Miscellaneous Offences Act, Money Laundering Act, Economic and Financial Commissions Act. The Federal Competition and Consumer Protection Act⁴³ (FCCPA) 2019 also contains explicit provisions which empower the regulatory commission that operates the Act, the Federal Competition and Consumer Protection Commission (FCCPC) to take a variety of actions which could aid protection against counterfeiting, substandard and inimical goods. There is need to consolidate all these laws into a standalone enforcement act. The penalties in the Merchandise Marks Act should be reviewed to constitute appropriate deterrent.

Enforcement of copyright and related rights

The Nigeria Copyright Act which provides the legal regime for copyright administration and enforcement in Nigeria has good provisions that are substantially TRIPS compliant in many respects but has several inadequacies that needs to be addressed for enhanced effectiveness. The prominent ones are: (i) the penalty provision for violation of copyright is very obsolete and will not deter intending copyright infringer. The amount of fine stipulated in the Act was alright in 1988 that it was enacted. Inflation has eroded the value of the Naira over the years that the fine is just a slap on the wrist of copyright offenders; (ii) there is no provisions for the WIPO Internet treaties and requires introduction of comprehensive provisions to address the audiovisual performers and producers as well as provisions relating to reproduction of copyright works for the visually impaired persons in line with the Beijing and the Marrakesh Treaties. The section on exceptions to copyright has to adequately address specific areas such as online education and preservation of copyright works. It is important to note that a reform of the Copyright Act to accommodate the provisions of the WIPO Internet treaties, Beijing and Marrakesh

³⁶Patents and Designs Act No. 70 of 1970 recodified as Patents and Designs Act, Cap. P2. Law of the Federation of Nigeria 2004

³⁷ Supra

³⁸ Cap C.24 Laws of the Federation of Nigeria 2004

³⁹ Cap. F33 Laws of the Federation of Nigeria 2004

⁴⁰ Cap F32 Laws of the Federation of Nigeria 2004

⁴¹ Cap C34 Laws of the Federation of Nigeria 2004

⁴² Cap N1 LFN 2004

⁴³ Federal Competition and Consumer Protection Act 2018

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Treaties has taken place. Recently, the copyright bill was passed by the Senate. Some of notable highlights of the Bill include:

- (a) Prohibition of online duplication, rebroadcasting a work without consent from the copyright owner.
- (b) Proposed N100,000 fine or 1 year jail term for individuals and N2million for corporate bodies for infringement of copyright.
- (c) It is in line with Nigeria's obligations under the international treaties chiefly the Trade Related Aspects of Intellectual Property Rights Agreements (TRIPS).
- (d) Proposed new rights of remuneration for performers in respect of audiovisual works.

The passing of the Copyright Bill by the Nigerian Senate which seeks to repeal the Copyright Act, Cap C28 LFN 2004 in order to enact a new Copyright Act is a huge milestone for the Nigerian copyright industries. Meanwhile, there will still be the need to secure the concurrence of the Lower House to complete the process of repealing the present Act.

2.5.2 Institutional Framework for Enforcement of Intellectual Property Rights

Patents and Design Registry and the Trademarks Registry

The Patents and Designs Registry and the Trademarks Registry do not have enforcement capabilities. While some internal office actions can be reviewed by the Registrars, they become *functus officio* once a decision is made. The Registrar's decisions when sitting in a quasi-judicial capacity are equated with those of an inferior court of records, they are appealable to the Federal High Court. The Registrars can neither undertake actions to bar infringement nor conduct investigation into any breach. They cannot compel an applicant or a proprietor to desist from taking any action on any matter on which the office has authority except through court action. They also lack authority to undertake prosecution, investigation and enforcement in both civil and criminal breaches despite the provisions of section 61 of the Act⁴⁴.

This lack of prosecutory or enforcement powers by the Registries is underscored by the feelings in some quarters that most aspects of infringement matters are within the realm of private commercial right. This school of thought posit that in a polity where there are inadequate funds for major necessities, it will be irresponsible to call upon the government to commit scarce resources to issues that the private sector can adequately handle. There is a further argument that in so far as most IP matters are concerned either in the form of infringement or otherwise that are devoid of public harm, it the Registry should have a limited government participation.

However, there is need to accord the Registry with some prosecutory powers especially on issues dealing specifically with failure to comply with the directives of the Registrar and more importantly, on the extant provisions of the Act.

⁴⁴ The Trade Marks Act Cap. T13 Law of the Federation of Nigeria 2004

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Undoubtedly, actions such as infringement relate to matters arising from the actions and decisions of the Registrar. That being the case, there is need to ensure that the Registrar is not afforded an opportunity to sit in adjudication over a matter he has rightly or wrongly taken actions and decisions on. Accordingly, a preferable position will be to set up an Appeal Board independent of the Trademarks Registry from which decisions from the Registrar/Tribunal can be heard and the Administrative Panel from which decisions of the Registrar of Patents and Designs can be heard. With an expanded jurisdiction, the Appeal Board can attend to infringement and passing-off matters along with other appeals from the Registrars. The Board will be staffed with people immensely knowledgeable on IP matters and appeals from the Board can proceed straight to the Court of Appeal. Members of the said Appeal board cannot be selected for Law firms that register Intellectual Property rights with the Registry.

Nigerian Copyright Commission

The enforcement mandate of the NCC was conferred in 1992 via the Copyright (Amendment) Decree No. 98 which has now been incorporated into the Act in Section 38. The primary purpose of the section was to confer on the Commission certain powers to enable it to enforce the law. Consequently, the section empowered the Commission to appoint Copyright Inspectors who are authorized to conduct investigation and prosecute copyright infringement cases. In essence, the section accords Copyright Inspectors with powers equivalent to that of the Police in respect of copyright offences. Copyright infringement in Nigeria can be in relation to works protected by copyright, neighboring rights of performers and folklore. It is both a civil and criminal matter. Civil action is the responsibility of the right owner, and it includes assignees, exclusive licensees' author of works with respect moral rights, performers of live performances and the Copyright Commission with respect to protection of expression of folklore. The criminal dimension of it is the duty of the Copyright Commission, though in many cases with the support of the victim of copyright infringement who has to lodge a complaint of the infringement with the Commission. This however does not preclude the Commission from *suo motu* initiating enforcement action without recourse to the rights owner. Both actions however fall under the jurisdiction of the Federal High Court.

It is instructive to note that enforcement of copyright operation by the Copyright Commission requires inter-agency assistance and support from other agencies particularly the Nigeria Police, and the Nigerian Customs Service. Furthermore, IP enforcement include judicial and administrative procedures/remedies that can be undertaken by the Copyright Commission (copyright offenses); the National Agency of Food and Drug Administration and Control (NAFDAC), for NAFDAC regulated products, the Federal Consumer and Competition Protection Commission (FCCPC) for complaints by consumers, the Standards Organization of Nigeria (sub-standard products), the Board of Customs (prohibited goods that arguably

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infringe IP). NAFDAC being a sister government agency and having been vested with investigatory, prosecutory and enforcement powers on issues with trademark coloration but bothering on public health is seen as sufficient and measured protection that does not pull the government into the arena of commercial dispute resolution. Coordination of the activities of all these agencies is not easy.

Despite a good provision on enforcement of rights and the empowerment of the NCC as enforcement agency, enforcement of right is still bedevilled by many challenges and rampant violation of copyright commonly referred to as piracy in Nigeria is key issue identified by stakeholders particularly right owners in the industry that is undermining the potential capacity sector to maximally contribute to national economic growth and development. Enforcement capacity of the NCC needs to be made more robust through multi sectoral initiative that entails: massive public enlightenment of the public to get critical support and respect for creativity and no patronage for pirated materials, stronger interagency cooperation particularly for cross border piracy activities, discussions with neighbouring countries (ECOWAS) that will lead to a better regional cooperation and harmonization of IP enforcement strategies to check cross-border violation of copyright, establishment of a platform to mobilize stakeholders/societies trade associations, in the creative industry to forge a synergy and promote cooperation and support necessary for the enforcement of rights and activities of NCC, and capacity building of Copyright Inspectors for enhanced efficiency.

The NCC's capacity for enforcement is impaired by poor human capacity in terms of numbers. The total number of staff (just 337) is insufficient to police the length and breadth of a huge country like Nigeria which geographically is almost a million square kilometres. A more proactive manner needs to be devised to persuade the government to allow the recruitment of more staff in order to enhance enforcement capacity. This could be by way of engaging stakeholders in the creative industry and pressure groups to bring the needs of NCC in this regard to the attention of the government.

There is inter-agency cooperation between the NCC and other government agencies and it has proved very useful in aiding the enforcement activities of the NCC based on MoU and interpersonal relationships between heads of these agencies.

2.5.3 Courts

The following courts have jurisdiction to handle infringement of all intellectual property rights: the Federal High Court, Court of Appeal and the Supreme Court. State High Courts have limited jurisdiction for breaches of IP related rights such as privacy. Neither the Registrars nor indeed the Registries have any part to play in an infringement action and rightly so. The Registrar has been called up to give expert opinion in some cases and has also been joined as co-defendants) Enforcement of any right derived from the Registries, especially infringement is domiciled in the Federal High Court as the court of first instance, albeit criminal matters pertaining to trademarks counterfeiting and the likes can be commenced at the Magistrate court.

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Court decisions on the merits of a case are in writing and reasoned. Court decisions on the merits of each case are based only on evidence in respect of which parties were offered the opportunity to be heard.⁴⁵ Parties and the public can apply to for certified copies of court decisions. These decisions are made available to applicants from between one day to several weeks, depending on administrative hitches.⁴⁶ The average period that elapses between the commencement of civil proceedings (other than proceedings in respect of provisional measures) and the delivery of the judgment or decision of the court is between two years and five years.⁴⁷ Proceedings can be expedited for provisional measures and where urgency is established. Criminal proceedings take an average of two to four years, depending on availability of witnesses, the cooperation of defence counsel and the trial judge. The State acts as the prosecutor in criminal proceedings, except where a fiat has been obtained by a private attorney.

Appeals can be lodged against a court decision on the merits.⁴⁸ The appeal must be based on the law and what transpired in court. Appeals lies from the High Court to the Court of Appeal and then to the Supreme Court and this can take from between 2 years to 6 years between the courts.⁴⁹ Criminal appeals can be expedited but civil appeals are hardly expedited except there is a serious issue of law.⁵⁰

2.5.5 Border measures

Apart from the courts, the Board of Customs has administrative powers and procedures that can enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark goods or pirated copyright goods may take place, to secure the suspension by customs authorities, of the release of such goods into free circulation.⁵¹ Given that the customs procedure affects counterfeit goods, it is arguable that it is applicable to breaches of designs and patents.⁵² The Board of Customs can use their discretion to act but this is strictly speaking, not yet provided for by law.

The competent administrative authority for an application for suspension of the release of the goods may be submitted is the Customs Area Controller.⁵³ The requirements for an application for suspension to be valid is a sworn affidavit and the filing prerequisite forms.⁵⁴ The suspension of the release of goods be ordered

⁴⁵Art.41(3)TRIPS.

⁴⁶Art. 41, (2) and (3) of TRIPS.

⁴⁷Art.41(2)TRIPS.

⁴⁸Art.41(4) TRIPS.

⁴⁹Art. 41(2) TRIPS.

⁵⁰Art.41(2) TRIPS.

⁵¹Art.51TRIPS

⁵²Art.60 TRIPS.

⁵³Art.51TRIPS.

⁵⁴Art. 52 TRIPS.

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and maintained for two weeks.⁵⁵ The customs can require the applicant to provide a security or equivalent assurance sufficient to protect the affected party and the competent authorities and to prevent abuse.⁵⁶ The importer and applicant are promptly notified of the suspension of the release of the goods.⁵⁷

In limited circumstances (for example for perishable goods), the goods in respect of which suspension has been ordered may be released upon request of the owner, importer or consignee of the goods and subject to his posting of a security in an amount sufficient to protect the right holders for any infringement.⁵⁸ Where the alleged right holder fails to pursue a court or other administrative action, the detained goods may be released upon such request being ordered.

For suspended goods, in proceedings leading to a decision on the merits of the case the defendant can request to view and be heard in order when urging that a decision be modified, revoked or confirmed.⁵⁹ They have the authority to give the applicant and the importer a right of inspection of the goods whose release has been suspended.⁶⁰ The customs do not have the statutory power but they exercise it nonetheless to : order applicant who requested suspension of the goods to pay the importer, the consignee and the owner of the goods, appropriate compensation for any injury caused to them (i) through the wrongful suspension of the release of goods, or (ii) following the failure of the applicant to initiate proceedings leading to a decision on the merits of the case, or (iii) where the suspension has been revoked at the request of the affected party.⁶¹ The injured importer can also sue the person who requested that his goods be seized.

The customs have the power to order, without compensation of any sort, the destruction or any other disposal outside the channels of commerce of the infringing goods whose release was suspended, when the offending mark is obliterated from the goods.⁶² There is no provision permitting the re-exportation of counterfeit trademark goods in an unaltered state or subjecting such goods to a different customs procedure.⁶³ The customs are allowed to act upon their own initiative (ex officio) to suspend the release of the goods in respect of which they have acquired prima facie evidence that an IP right is being infringed, but this is not mandatory.⁶⁴ In doing this, the customs can seek information that may assist them from the right holders. The importer has a right of appeal to the custom authorities and to the courts. Unless the action is not taken bona fide and it causes damage

⁵⁵Art. 53(2) and 55TRIPS.

⁵⁶Art. 53(1) TRIPS.

⁵⁷Art. 54TRIPS.

⁵⁸Art. 53(2) TRIPS.

⁵⁹Art. 55 TRIPS.

⁶⁰Art. 57 TRIPS.

⁶¹Art. 56 TRIPS

⁶²Art.59 TRIPS.

⁶³Art. 59 TRIPS.

⁶⁴Art.58 TRIPS.

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where the defendant promptly demonstrates the error, it is unlikely that the customs or officers will be liable for wrongful suspension.⁶⁵

In the light of the circumstances under which the Customs has arrogated to itself certain powers to suspend the release of goods to importers without due recourse to the court, it is recommended that the authority of the Customs in that regards as it relates to counterfeited or infringed goods should be exercised within a specified period pending when the complainant can approach the court to obtain a preliminary order, otherwise the customs actions, which are highly susceptible to arbitrary decision can be seen to erodes the powers and authority of the courts.

2.5.6. Criminal procedures and penalties

There are criminal procedures and penalties available in cases of willful trademark counterfeiting and copyright piracy on a commercial scale.⁶⁶ The statutes do not state directly the criminal procedures and penalties available in other cases of infringement of IP rights. The FHC is the court that has jurisdiction over criminal acts of infringement of IP rights. The public authorities responsible for initiating criminal proceedings bordering on breaches of IP are NCC, NAFDAC, SON, Customs, FCCPC. Some operate mainly after submission of complaint but in some clear apparent cases, these agencies may make initial arrests of persons or detention of products. Prosecution often needs the cooperation of and attendance by affected IPR holders. Private persons may obtain the Attorney General's fiat to prosecute.

In case of criminal proceedings initiated ex officio by public authorities, right holders and/ or the licensee (exclusive/non-exclusive) cannot join the case and claim for civil damages in the framework of such criminal proceedings. Right holders may institute separate civil actions simultaneously with the criminal prosecution of IPR. The criminal penalties include (i) imprisonment and/or monetary fines having a sufficient deterrent effect; and (ii) seizure, forfeiture and destruction of infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. In limited circumstances under the statutes dealing financial crimes, courts can order the confiscation of proceeds of crime such as the assets of offenders.

The penalties embedded in the Merchandise Marks Act for forging a trade mark or selling goods to which false trade mark or description applies on conviction before the High Court is a mere two years or a fine and before the Magistrate Court, an imprisonment for a term of six months or to a fine of one hundred Naira (N100). Both penalties are grossly inadequate and certainly do not serve as a deterrent in any form whatsoever.

⁶⁵Art. 58 TRIPS.

⁶⁶Art. 61 TRIPS.

2.5.7 IP enforcement agency

There is no single agency that enforces IP in Nigeria, rather several agencies deal with the enforcement of IP laws. Agencies responsible for prosecuting IP offenses include NCC, NAFDAC, SON, FCCPC, the Board of Customs and the EFCC. If it is primarily a copyright issue, the NCC, if a food or drug/cosmetics, NAFDAC, if it is an imported product, the Board of Customs, if it is an issue of standards, SON. There should be improved coordination, and this can be harnessed if the bodies are mandated to meet regularly. NAFDAC, SON, FCCPC, the Board of Customs and the EFCC handle domestic trade mark counterfeiting whilst the NCC handles copyright piracy. EFCC handles computer and cybercrimes. The level of coordination between agencies dealing with counterfeiting and piracy, and agencies dealing with cybercrime is reasonable.

The Federal and State High Courts adjudicate on these offenses. FHC judges are the primary judges that deal with IP cases. Knowledge of IP is not necessarily taken into consideration when the judges are appointed. The capacity building programs for lawyers, prosecutors and judges on IP-related matters is not well coordinated, neither is it consistent. A few lawyers and even fewer judges specialize in IP. Time and again, Law enforcement officials (police, customs, inspectors, attends conferences, workshops etc. by INTERPOL, UNODC AND US Department of Justice and local stakeholders.

2.5.7 Educating the public/consumers, and creating awareness

The private sector and the government agencies collaborate on programmes for educating the public/consumers and creating awareness of the dangers/the impact of counterfeit and pirated goods. The programs sometimes positively affect consumer attitudes, as consumers avoid the products and report suspicious activities. The statutes creating the autonomous government agencies mandate them to create public and consumer awareness to stimulate improved understanding of the issues and the growth of the relevant sectors. Unfortunately, these agencies are not sufficiently funded hence, they do not have sufficient impact in the enlightenment drive.

The programs can be more effective if they are run consistently and widely. There have been studies in the copyright sector by the NCC sponsored by the Ford Foundation and by NAFDAC sponsored by the pharmaceutical industries. The studies reveal that enforcement has been hindered by the following: low penalties, poor funding of the enforcement agencies, the slow court system, weak distribution of original products and the fact that the perpetrators of piracy and counterfeiting is largely organized crime. There is a plan by NAFDAC to undertake new study. Hopefully, this study will confirm areas where there has been significant improvements and reveal further gaps to be plugged.

CHAPTER THREE: STRATEGIC DIRECTION

3.1 Introduction

The Vision of the National Development Plan (2021-2025) is to unlock Nigeria's potentials in all sectors of the economy for sustainable, holistic, and inclusive national development. This vision is consistent with the pursuit of socio-economic transformation of the country as envisioned in the long-term aspiration of Nigeria (Nigeria Agenda 2050). This National Intellectual Property Policy and Strategy hopes to contribute towards the realization of Nigeria's current development plan (2021-2025) and long-term development agenda, (Vision 2050).

3.2 Vision, Mission, and Goal

The Vision, Mission and Strategic Objectives of the National Intellectual Property Policy and Strategy of Nigeria are as follows:

VISION

Utilising Intellectual Property for Sustainable National Prosperity

MISSION

To promote a comprehensive and conducive IP ecosystem as catalyst for harnessing the full potential of IP for socio-cultural development and sustainable economic growth

STRATEGIC OBJECTIVES

- To strengthen legal framework for protection of intellectual property rights in Nigeria.
- To strengthen institutional framework for the administration and management of intellectual property rights in Nigeria
- To enhance generation and protection of intellectual property rights
- To promote and facilitate commercial exploitation of IP assets and technology transfer
- To strengthen the legal and institutional framework for enforcement of IP rights in Nigeria
- To develop the required human resources for the administration, protection, commercialization, and enforcement of IP rights
- To promote IP training, education and awareness

CHAPTER FOUR: POLICY OBJECTIVES AND STRATEGIES

4.1 Introduction

The policy objectives and strategies are geared towards harnessing the opportunities and achievements within the intellectual property ecosystem in Nigeria while addressing the challenges and gaps identified from the situation analysis. The policy prioritises the following strategic nine issues:

STRATEGIC ISSUES TO BE PURSUED BY THIS IP POLICY AND STRATEGY

1. Legal framework for the protection of intellectual property rights
2. Institutional framework for the administration and management of intellectual property rights
3. Generation and protection of intellectual property assets
4. Technology transfer and commercialization of industrial property assets
5. Support structures for commercialization in the creative industry
6. Policy and support structures for commercialization of plants and animal varieties, traditional knowledge, and tradition medicines
7. IP Enforcement
8. IP Training and Education
9. IP Awareness

4.2 Legal Framework for the protection of intellectual property right.

Issue

The existing legal framework for the protection of intellectual property is inadequate, in terms of coverage, completeness, and compliancy with international agreements. Whereas Nigeria currently has legislations for the administration of copyright, patents, designs and trademarks, there are no legislations for the administration of trade secrets, databases, integrated circuit, geographical indications, utility model Patent and business method patents. The recently enacted Plant Variety Protection (PVP) Act 2021 to encourage investment in plant breeding and crop variety development is a key milestone in the Nigerian IP legislation. However, the PVP regulations will need to be developed to operationalize the Act. Furthermore, there is currently no legislation covering animal breeders' rights. In terms of compliance, Nigeria is party to several international treaties and conventions related to copyright and patent. Unfortunately, some of these treaties have not been domesticated in accordance with Nigeria's constitutional requirement. Furthermore, there is need to domesticate the TRIPs Agreement with special attention to Article 27.3(b), use of sui generis option etc. for the protection of farmers rights, new plant varieties (and animal breeds), TK, folklore etc. as well as emerging IP rights issues embedded in the Convention on Biological Diversity (CBD) and its protocols etc. There is also a need to update legislations, such as the Trade Marks Act to comply with certain domesticated treaties, i.e. Paris Convention.

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Policy Objective

To strengthen the legal framework for protection of intellectual property rights in Nigeria

Strategies

To achieve the above-mentioned policy objective, the following strategies will be pursued:

- a) Review and amend existing IP legislations to meet TRIPs requirements and take advantage of emerging trends and best practices
- b) Develop and enact legislations to cover existing and emerging IP areas
- c) Domesticating international treaties and agreements taking into consideration the best interests of Nigeria and the relevant stakeholders.

4.3 Institutional framework for the administration and management of intellectual property rights

Issue

The main institutions responsible for administration and management of intellectual property rights are the Patent and Design Registry, the Trademark Registry, the Nigerian Copyright Commission, and Plant Variety Protection Office.

The Patent and Design Registry as well as the Trademarks Registry, which are both under the Federal Ministry of Investment, Trade and Commerce, are responsible for the administration of industrial property rights, mainly patents, industrial design, trademarks, and service marks. The two Registries are faced with several challenges, top amongst them are the low levels of staffing, automation, funding, and access to databases. Furthermore, the previous plans of consolidation of the two registries into the proposed Nigerian Industrial Property Commission has stalled. There are also concerns amongst stakeholders that currently Nigeria does not do substantial examination of patent applications and that there is no independent tribunal to handle disputes on industrial property registrations.

The Copyright Act Cap C.28 establishes the Nigerian Copyright Commission as the main copyright institution mandated with the responsibility of administration and enforcement of copyright in Nigeria. The Commission is an autonomous agency, with its own board, budget, and staffing plans. This is commendable and it is in line with the best practice in the region. However, the funding and staffing levels are inadequate to meet the expanding requirements for NCC's services. There is need amongst stakeholders to adopt a copyright registration system (for proof of copyright, not for eligibility which does not require any formality), rather than the depository practice currently in operation. The amended Copyright Act (2022) has addressed this issue.

The PVP Office, which has been created by the PVP Act 2021, is a semi-autonomous institution under the National Agricultural Seeds Council (NASC) that will be overseen by the NASC Board and a PVP Advisory Committee. The office is to be funded through the PBR Development Fund, which is provided for under the Act. However, the PVP Office is still in its infant stage and therefore, much will need to be done to enable the office to operate and promote the development of PVP system in Nigeria.

Policy objective

To strengthen the institutional framework for the administration and management of intellectual property in Nigeria.

Strategies

To achieve the above-mentioned policy objective, the following strategies will be pursued:

- a. Establish the Nigerian Industrial Property Office.
- b. Support the creation of provincial IP offices
- c. Consolidate examination process by undertaking both formal and substantive examination
- d. Automate the systems and procedures for the administration of the intellectual property rights
- e. Support the full operationalization of Plant Breeders Rights Office
- f. Enhance human resource capacities of the four IP Offices
- g. Enhance funding of IP Offices

4.4 Generation and protection of intellectual property rights

Creativity and innovation are key to driving the development aspiration of Nigeria. These have been recognized in several national policies and plans, including the Science, Technology, and Innovation Policy (2012), the National Digital Economy Policy and Strategy (2020-2030), and the National Development Plan (2020-2025). For example, the STI Policy (2012) recognize the need to create and protect Intellectual Property Rights (IPR) and give recognition to inventors to stimulate the development of inventions as well as create wealth for Intellectual Property (IP) owners and the country. However, funding of research and development in universities and research organizations is considered by the stakeholders as inadequate, several universities and research organizations do not have intellectual property policy as well as intellectual property offices. The use of IP applications and grants for the purpose of promotion is not yet widespread. The linkages and collaboration between universities and industries is not adequate, and the required human resource to support drafting of IP application is inadequate. The National Digital Economy Policy and Strategy (2020-2030), through its Pillar number 7 (Digital Services Development and Promotion) aims to support the creation of Innovation Driven Enterprises and digitally enabled MSMEs, facilitation of mentorship and funding programs to support innovation driven enterprises and digitally enabled MSMEs. However, these aspirations cannot be achieved adequately without the use of intellectual property rights.

Policy objective

To enhance generation and protection of intellectual property

Strategies

To achieve the above-mentioned policy objective, the following strategies will be pursued:

- a. Enhance funding for Research and Development as well as protection of innovations
- b. Promote the use of IP for promotion in universities and research organizations
- c. Promote development and revision of intellectual property policies in universities and research organization
- d. Promote the use of IP information system for research, development, and innovation
- e. Develop the required human resources to support the protection and maintenance of IP assets
- f. Strengthen University-Industry Linkages
- g. Develop a framework for enhance assistance to MSEs for domestic filing of patents
- h. Develop and implement national research priority areas
- i. Undertake a comprehensive study on the contribution of industrial property to economic development
- j. Support the decentralization of the adjudicative structure in the protection mechanism
- k. Support the creation of data synergy for the regulatory alliance amongst the various regulators

4.5 Capacity and institutional support structures for technology transfer and commercialization of IP rights

Issue

Today, technology transfer and IP commercialization is considered the most important step in the IP value chain. It is only through commercialization that the knowledge from the university can be made available for uptake by users in the private sector, government, and development partners. Furthermore, successful technology transfer that provide solutions to the challenges of the public can lead to an increase in public's respect, goodwill, and support to the universities. This could unlock additional resources for research and development as well as innovation. Through commercialization, the university may get additional resource. It is only through commercialization that the researchers can be able to get some rewards out of their creativity and inventiveness. Unfortunately, today, commercialization has remained the weakest point in IP management in Nigerian universities and research organizations:

- a) There are inadequate trained IP professionals that can support technology transfer and commercialization of research outputs and provide services such as IP valuation, licensing, and auditing.

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- b) Currently there is no national IP commercialization framework to guide universities and research organizations, on various aspects of technology transfer and commercialization of research outputs.
- c) As a national agency, NOTAP has done a good job in promoting commercialization and technology transfer. However, its capacity in terms of staffing and resources need to be strengthened to enable it be more effective.
- d) The infrastructure or facilities to support researchers and inventors with product or prototype development is very weak and expensive. Many have to produce their prototypes abroad. Most universities do not have technology parks and TTOs. No record is available of the success of any institute's tech park.
- e) The level of commercialization of TK and TM is low and there is no national agency for traditional medicine which can promote these activities.
- f) The use of IP as collateral is in its infancy in Nigeria and IP assets are hardly recognized by financial institutions in Nigeria. Financing institutions and venture capitalists rarely promote monetization or securitization of IP.

Policy objective

Strengthen capacity and institutional support structures for technology transfer and commercialization of IP rights

Strategies

- a) Build Human Resource Capacity to support technology transfer and commercialization of research outputs.
- b) Develop a national IP commercialization framework/guideline.
- c) Strengthen the capacity of NOTAP
- d) Promote commercialization in the creative industry
- e) Promote and support the growth of start-ups and innovation hubs
- f) Promote commercialization of TK and TM
- g) Promote the use of IP as collateral in Nigeria.
- h) Establish a national fund for commercialization of IPR and Innovation
- i) Promote and strengthen the establishment of Transfer of Technology Offices in Universities, technical and research institutes
- j) Promote initiatives to help MSMEs and research institutions to validate pilots and scale up through market testing
- k) Promote the use of e-commerce as a platform for commercialization of IPR

4.6 Support structure for commercialization in the creative industries

The creative industry is the most well-developed IP sector in Nigeria, creating huge employment opportunity and generating income and contributing to the growth of the economy. However, the sector's potential has not been adequately exploited due to the following:

- a. *Lack of data on the importance of copyright to the economy.* Despite being one of the leading countries in the region in terms of copyright industry, Nigeria has not yet undertaken a study to determine the contribution of the copyright industry to her economy.
- b. *Inadequate role at subnational:* Efforts towards making the creative industry more relevant to national development agenda, has mainly been promoted by the Federal Government. Although there are appreciable efforts at subnational level in form of initiatives, a lot still has to be done by the states and local governments in promoting creative industry, since they are closer to the key players in the industry and strategically positioned to identify and reach out to them.
- c. *Business support system:* Although government has business support system in place particularly, loan through various schemes powered by the Bank of Industry, apart from the Nollywood fund which a lot of entrepreneurs in the film industry have benefited from, they are not creative industry specific and accessing these funds could be challenging at times. Also, for the Nollywood fund, sum of N50 million which appears to be the common limits the Bank is willing to provide needs to be reviewed to allow access to bigger sum for projects in the film industry. In addition, bottlenecks hindering access to such fund should be removed. It is instructive to note there is Creative Industry Financing Initiative (CIFI) which is another business support initiative in form of funding that is creative industry specific developed by the CBN in collaboration with Bankers Committee specifically for the Fashion, Music, IT, Movies production and distribution and software engineering industries. Many stakeholders are not aware of this initiative. Moreover, the CIFI does not cover the entire creative industry. There is a need for enlightenment campaign to create awareness among the targeted beneficiaries of the initiative. There is also the need to widen its scope to cover the entire creative industry. It is also worth noting that stakeholders Agencies of government that are supposed to provide business support like the Nigerian Film Corporation (NFC) for the film industry, National Council for Arts and Culture (NCAC) for the creative industry, the Nigerian Export Promotion Council (NEPC), and the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN), are constrained by funding. Increase funding of these agencies through increase budgetary allocation to enable them perform their laudable task is recommended.
- d. *Collective Management Organizations (CMOs):* The establishment of the three CMOs currently operating in the country by the Copyright Commission has

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strengthened the value chain of each sector of their operations. However, the following challenges will need to be addressed to enhance their effectiveness: reluctance of users of works to pay for use of works; the CMOs lack the necessary human capacity and infrastructure for effective and efficient operation; constant bickering and fighting among the rights owners; lack of proper initiative to proactively reach out to the users and making them to pay for the use of works; and inadequate monitoring mechanisms on the detection/monitoring of collection and payment of royalties in line with global best practices which encourages plough backs.

Policy objective

Strengthen capacity and institutional support structures for technology transfer and commercialization of copyright and related rights.

Strategies

- a) Generate evidence of the importance of the copyright sector in Nigeria and use to lobby for more attention of the policy makers to the sector
- b) Enhance the role of the sub-national levels of government on development and promotion of the creative sector
- c) Enhance funding to business support agencies for the copyright sector
- d) Strengthen the Collective Management Organizations.

4.7 Commercialization of new plant and animal varieties

Issue

The main challenges in regard to commercialization of new plant/animal varieties include importation from International Breeders rather than encourage Breeders within the country, lack of awareness of IP rights related to plant and animal varieties and the high costs of registering, enforcement and maintenance fees, which is a disincentive.

Policy objective

Strengthen commercialization of new plant varieties and animal

Strategies

- a. Enhance funding support for plant breeders and researchers for the development of new plant breeds
- b. Create awareness creation amongst stakeholders on the commercial value and economic importance of new plant varieties among researchers and plant breeders
- c. Develop policy incentive for generation, protection and commercialization of new plant varieties
- d. Establish a national information data bank for new plant varieties

4.8 Legislative and institutional framework for enforcement of IP rights.

Issue

In many countries, IP enforcement remains the biggest challenge and disincentive for IP generation, protection, and commercialization. The situation analysis identified the following challenges facing IP enforcement in Nigeria:

- a. Legislative framework: IP enforcement regulations are embedded in several statutes that aid the enforcement of IP rights in Nigeria. There is need to consolidate all these laws into a standalone enforcement act.
- b. Lack of prosecutory powers of the industrial property registries: The Patents and Designs Registry and the Trademarks Registry do not have enforcement capabilities since they lack prosecutory or enforcement powers on issues that they preside over.
- c. Nigerian Copyright Commission: Despite a good provision on enforcement of rights and the empowerment of the Commission as enforcement agency, enforcement of right is still bedevilled by many challenges and rampant violation of copyright (piracy) in Nigeria. The NCC's capacity for enforcement is impaired by low staff and funding levels.
- d. IP Enforcement Agency: There are several agencies dealing with the enforcement of IP rights in Nigeria, posing a coordination challenge that impacts effectiveness and efficiency in provision of enforcement services.
- e. Training of IP enforcement officials, public and consumers: There are inadequate training and awareness creation programs for enforcement agencies, the public and consumer, to help enhance enforcements efforts.
- f. Creating collaboration and training amongst quasi-enforcement agencies: The Police and Customs play a crucial role in enabling IP enforcement; accordingly, it is necessary to involve them in the training scheme and build a collaboration between these agencies and the various administrative and quasi-judicial arms of IP commissions and departments.

Policy objective

Strengthen IP enforcement in Nigeria

Strategies

- a. Consolidate IP enforcement regulations into a standalone enforcement Act.
- b. Strengthen the enforcement powers of Patents and Designs Registry and the Trademarks Registry.
- c. Strengthen the NCC's capacity for enforcement through increased staffing and funding
- d. Consider creating a single agency for IP Enforcement in Nigeria.
- e. Develop and implement regular training and awareness creation programs for enforcement agencies, the public and consumer, to help enhance enforcements efforts.

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- f. Enhanced synergy between various IP enforcement agencies in order to strengthen enforcement initiatives, sharing intelligence and best practices at national and international levels, examining jurisdictional challenges.
- g. Promoting use of technology-based solution in IPRs enforcement
- h. Promoting fact finding studies and research in collaboration with relevant stakeholders to assess the extent of counterfeiting and piracy, reason behind it and appropriate measures to tackle it
- i. Facilitate effective adjudication of IPR disputes through different measures such as ADRs
- j. Sensitise inventors and creators of IP on measures for the protection and enforcement of their rights
- k. Create awareness of the value of IP and respect for creativity through mass enlightenment programme and educate the general public especially youth and students on the ills of counterfeit and pirated products

4.9 IP training and education

Issue

The level of IP training and education amongst the community of a university or research organization is key for strengthening IP generation, protection and commercialization. Internally, through IP training and education, students can acquire basis knowledge on IP, which is important since they are amongst the potential IP generators and users. Externally, IP training and education is important to produce the required IP professionals that can support IP service provision at the university as well as in the economy. The service providers required to support IP generation include technology transfer managers, IP attorneys, Patent drafters and examiners, while commercialization requires IP service providers in the areas of IP valuation, licensing, and auditing. Training is also required for IP judges, lawyers, police, and custom officials to support IP enforcement. Today, in Nigeria, the following gaps have been identified regarding IP training and education.

- a) Teaching of IP at university level is limited to a few law schools. At least a third of the Faculties of Law offer intellectual property courses. Several law faculties provide training for up to doctorate level for IP. However, aside from law, IP education hardly feature in the curricula or content of disciplines.
- b) The Ministry of Industry, Trade and Commerce, NOTAP, the Nigerian Institute of Advanced Legal Studies, the National Agricultural Seeds Council, the Registry of Paten and Design and the Registry of Trademarks, amongst others, have been providing some training on IP. However, there is no national IP training strategy to coordinate, harness, and strengthen these training efforts.
- c) Nigerian is amongst the few African countries that provide training for the

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creative industry. There is the Nigerian Copyright Institute and tertiary institutions. The establishment of institutions such as the Abuja College of Culture and Tourism aimed at becoming the premier tourism and cultural college serving West Africa sub-region, as well as the National Institute of Culture and Tourism to conduct research, plan and oversee education and training for the culture and tourism sector, as envisaged in the Nigerian Tourism Development and Master Plan should be an opportunity for introducing copyright and creative industries programs for the benefit of the industry players. These efforts need to be strengthened.

Policy objective

Strengthen IP Training and Education in Nigeria.

Strategies

To achieve the above-mentioned policy objective, the following strategies will be pursued:

- a. Promote and introduce IP Education in Universities, other Tertiary Institutions, National Judicial Institute, Police and Customs Training institutes as well as research institutions.
- b. Develop a National IP Training and Education Strategy
- c. Strengthen the Nigerian Copyright Institute to promote training and capacity building for the creative sector.
- d. Introduce multidisciplinary IP courses in training institutes such as, National Judicial Institute, Police, Customs training Institutes and research institutes
- e. Promote the development and adoption of institutional IP policy in the universities, technical and research institutes

4.10 IP awareness

Issue

The level of IP awareness amongst the research community, Industry and the public is the most important factor for strengthening the management of intellectual property rights in Nigeria. High level of awareness of issues around intellectual property assets can lead to increase in innovative and creative activities; raise the number of applications of IP rights, improve on commercialization of IP rights and strengthen enforcement of IP rights. Enhance awareness of IP by the decision makers will enable them to prioritise issues to do with intellectual property management, including funding, resourcing as well as development of appropriate policy incentives. Although the level of IP awareness differs from sector to sector, (e.g., universities, business, research institutions, government departments, local government), it is nonetheless, low across all sectors. No country-wide IP awareness evaluation exercise has been undertaken and there is no strategy in place for enhancing IP awareness in Nigeria.

Policy objective

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Promote IP awareness to the stakeholders and general population.

Strategies

To achieve the above-mentioned policy objective, the following strategies will be pursued:

1. To prepare and implement Intellectual Property awareness and outreach plan.
2. Launching a well-coordinated systematic campaign for promoting Nigeria's IP capability by conveying to all stakeholders the value and benefits of IP
3. Creating a well-publicized events and ongoing programs to emphasize the importance of IP by for instance: declaring and celebrating national innovation and IP days and world IP Days in various cities, and schools at all levels, and establishing National "Hall of Fame" to celebrate IP Innovators and creators
4. Engaging highly respected eminent personalities as "ambassadors" to spread awareness and importance of IP in Nigeria
5. Creating materials for IP promotion in various local languages and pictorial form for those who cannot read
6. Providing scientist/researchers with a deeper level of understanding about the need to protect their inventions even before publishing

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CHAPTER FIVE: PROGRAMS AND PROJECTS

5.1 Summary of programs and projects

To realise the policy objectives and strategies, some 39 projects and programs will be pursued by the government and its Agencies in the short-term (1 year), medium-term (up to 3 years) and long term (up to 5 years). A summary of these activities is given in the table below. This chapter provides description of each of these activities, the status, what need to be done and by whom.

	Programs and Projects	Duration
Policy Objective 1: Strengthen legal framework for the protection of IP rights		
1	Review legislations on patents, industrial designs, and trademarks	Short Term
2	Develop new legislations for trade secret, layout integrated circuit, utility model and geographical indications, animal breeders' rights, traditional knowledge and traditional medicine	Long Term
3	Develop regulations for Plant Variety Act 2021	Short Term
4	Domesticate relevant international treaties	Medium Term
5	Accede to UPOV	Medium term
Policy Objective 2: Strengthen the institutional framework for the administration and management of intellectual property rights		
1	Establish Nigerian Industrial Property Commission	Medium Term
2	Consolidate formal and substantive examination	Medium Term
3	Develop and implement a plan for automation of IP registration	Short Term
4	Develop and implement a plan for full operationalization of Plant Varieties Protection Office	Short Term
5	Develop and implement a plan for strengthening human resource capacities of the IP offices	Medium term
Policy Objective 3: Enhance generation and protection of intellectual property rights		
1	Enhance funding for R&D and innovation in academia and industry	Medium Term
2	Promote recognition and use of IP for promotion of researchers	Medium Term
3	Support more universities and research institutions to established IP policies and revise existing policies	Short Term
4	Increase the use of patent information system for research and innovation	Medium Term
5	Support the development of human resource for management and protection of IP in universities and research organizations	Medium Term
6	Develop and implement a framework for strengthening linkages between universities and industries	Medium Term
Policy Objective 4: Strengthen capacity and institutional support for technology transfer and commercialization of intellectual property rights		
1	Develop and implement a plan for capacity building of IP professional service providers	Medium Term

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2	Develop and implement a national IP commercialization framework	Medium Term
3	Develop and implement a plan for strengthening the capacity of NOTAP	Short Term
4	Develop and implement a plan for promoting the growth of start-ups and innovation hubs in Nigeria	Short Term
5	Develop and implement a plan for plan for commercialization of TK and TM	Medium term
6	Develop a framework for promoting the use of IP as collateral for resource mobilization	Long Term
7	Promote and strengthen establishment of Technology Transfer offices in universities, technical and research institutions	Short Term
8	Promote initiatives to assist MSMEs and research institutions to validate pilots and scale up through market testing	Medium Term
9	Promote development and adoption of IP Policy by universities, technical and research institutions	Short term
10	Promote fact-finding studies and research in collaboration with relevant stakeholders to assess the extent of counterfeiting and piracy, and develop appropriate measures to tackle it.	Long term
Policy Objective 5: Strengthen capacity and institutional support for technology transfer and commercialization of copyright and related rights		
1	Undertake a study on the economic contribution of the copyright sector	Medium Term
2	Develop and implement a plan for enhancing the role of sub-national level of government on development and promotion of the creative sector	Medium Term
3	Strengthen the business services agencies for the creative sector	Medium Term
4	Develop and implement a plan for strengthening the capacities of the Collective Management Organizations	Short Term
5	Enhance the role of sub-national levels on the development and promotion of the creative sector	
6	Enhance coordination of agencies responsible for copyright and related rights	Short term
Policy Objective 6: Strengthen technology transfer and commercialization of new plant varieties		
1	Develop and implement a plan for promoting commercialization of plant varieties rights in Nigeria	Medium Term
Policy Objective 7: Strengthen enforcement of IP rights		
1	Develop a stand-alone legislation for IP enforcement	Medium Term
2	Establish Tribunals for industrial property rights	Medium Term
3	Develop and implement a plan to strengthening the staffing capacity of NCC	Short Term
4	Undertake a feasibility for establishing a single IP Enforcement	Medium Term

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	Agency	
5	Develop and implement a training and awareness programs for key stakeholders' enforcement officials the public and consumers	Medium term
6	Promote use of technology-based solutions in IPR enforcement	Medium Term
7	Enhance synergies between various IP enforcement agencies to strengthen enforcement initiatives, sharing of experiences and best practices at national and international levels	Short Term
Policy Objective 8: Strengthen IP Training in Nigeria		
1	Develop and implement a plan for enhancing IP training in universities and tertiary institutions	Medium Term
2	Develop and implement a national IP training and education strategy	Medium Term
3	Develop and implement a plan to strengthen Nigerian Copyright Institute	Short Term
4	Develop and implement IP Education in the National Judicial Institutes, Police and Customs Training Institutes as well as research institutes	Medium Term
Policy Objective 9: Promote IP awareness to stakeholders and general public		
1	Develop and implement IP awareness and outreach plan for industrial property	Medium Term
2	Develop and implement IP awareness and outreach plan for copyright sector	Medium Term
3	Develop and implement IP awareness and outreach plan for seed sector	Short Term
4	Identify and engage highly respected personalities to be IP ambassadors	Short Term

5.2 Strengthen legal framework for the protection of IP rights

5.2.1 Review the existing legislations on patent, industrial design, and trademark

1. Utility model

To promote innovations in all areas of the economy, support the innovativeness of MSME sector and harness the innovations from the informal sector including industrial clusters, the patents statute will be amended to introduce provision for protection of utility models. To provide evidence and justification, a rapid evaluation/assessment will be undertaken to document importance of utility models to promoting innovations and economic development of the country. This activity will be spearheaded by the Registry of patent and design.

2. Trademarks

The Trademarks Act, which is the legislation that primarily regulates the administration and proprietorship of this aspect of industrial property is patently lacking in various aspects and some of these inadequacies are:

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a. Express provisions relating to the incorporation of Service Marks into the Act:

The Nice Agreement provides for the classification of trade and service marks, albeit, in adopting the aforesaid agreement under Nigeria's industrial property practice, service mark is conspicuously absent in the provisions of the laws and regulations. There has been an attempt to amend this lapse by way of an executive directive issued by the Minister with oversight responsibility over the Registry. This course of action has generated major legal controversies amongst practitioners, and it has become necessary to rectify the situation appropriately. This can be done by extending the definition of trademark to include service mark. The process has been initiated in the draft Bill currently before the National Assembly. This process should be finalised in the short term.

b. Provisions relating to the listing of Convention Countries that can benefit from priority applications as provided under the Paris Convention:

The extant provision of the Act provides for priority application based on reciprocal convention treaties. The beneficiaries of the relevant provisions of the Act are to be determined by the Minister with oversight responsibility over the Trademarks Registry, in the case the Minister of Trade, Investment & Commerce. Presently, the Minister is yet to designate countries that will benefit from the relevant provisions of the Act. It is important that steps be taken to bring the application of the law in line with treaty obligations and expectations. The Minister can rectify the lacuna within the short term.

c. Practice Direction

A clear separation between the functions of the Registrar in an administrative and quasi-judicial capacity is needed. Current provisions of the Act vest the Registrar with administrative and quasi-judicial powers and in the absence of practice direction, this has presented numerous situations where the Registrar can be seen to be sitting as an adjudicator over matters that he/she has taken an administrative decision over. In line with legal expectations, there is need to set out clear directives on the path and manner of conducting and handling contentious quasi-judicial matters. This can be initiated by way of creating and proving a Practice Direction. The Minister through the office of the Registrar can implement this in the short term.

3. Copyright and related rights

The Nigeria Copyright Act which provides the legal regime for copyright administration and enforcement in Nigeria has good provisions that are substantially TRIPS compliant in many respects but has several inadequacies that needs to be addressed for enhanced effectiveness. The prominent ones are: (i) the penalty provision for violation of copyright is very obsolete and will not deter intending copyright infringer. The amount of fine stipulated in the Act was alright in 1988 that it

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was enacted. Inflation has eroded the value of the Naira over the years thus making the fine just a slap on the wrist of copyright offenders; (ii) there is no provisions for the WIPO Internet treaties and requires introduction of comprehensive provisions to address the audiovisual performers and producers as well as provisions relating to reproduction of copyright works for the visually impaired persons in line with the Beijing and the Marrakesh Treaties. The section on exceptions to copyright must adequately address specific areas such as online education and preservation of copyright works. A reform of the Copyright Act to accommodate the provisions of the WIPO Internet treaties, Beijing and Marrakesh Treaties and prescribing stiff and deterring penalties for copyright infringement, and to address other gaps is recommended.

4. Patent

The Patents Act may be revised to introduce substantive examination system in line with some Bills that have been presented to the National Assembly.

5.2.2 Develop and enact new legislations for existing and emerging areas

1. Trade secrets

Article 39 TRIPS classifies Trade Secrets (TS) as undisclosed information that needs to be protected under certain conditions. Indeed, this unconventional aspect on intellectual property law, as stated by WIPO is important as it provides incentive for businesses to innovate by safeguarding the substantial time and capital invested to develop competitively advantageous innovations, both technical and commercial, and especially those that are not patentable or do not merit the cost of patenting. The commercial relevance and viability of TS is first and foremost inherent in its content and secondly, assuring in the concept that its dubious acquisition exposes one to dire consequences.

There is no specific legislation on the protection of TS in Nigeria. However, semblance of protection is offered by section 15 of the Nigerian Freedom of Information Act (2011). There is need to articulate a theft of trade secrets within the body of industrial property legislation, more particularly as an ancillary to the legislations on trade/service marks, geographical indications etc. This can be done by the Nigerian Law Reform Commission working in conjunction with the Registry/Ministry of Trade, Investment and Commerce. The process can be incorporated within the body of the pending Industrial Property Bill.

2. Integrated circuit

Integrated circuits may be patentable if they meet the criteria for patentability. Otherwise, integrated circuits may be registrable as industrial designs in Nigeria. There does not seem to be a local integrated circuits industry or any international group that advocates a position in Nigeria. It is uncertain whether the industrial design registration system is sufficient for the industry but there is no evidence of

clamour by the industry for law reform to create a sui generis system for integrated circuits.

3. Geographical indications

Presently, Nigeria's attempt at protecting GIs in any form is often, but wrongly seen to be captured by way of section 43 of the Trademarks Act that provides for the registration and protection of Certification Marks. The emergence and introduction of GIs as an IP rights requires a sui generis legislation to capture its full purpose and benefits. By its very nature, GIs' importance and relevance is highlighted by its vast potential to create a value chain effect and galvanise rural socio-economic development. There is also the positive commercial PR perception attached to the source. The lack of specific legislation means that no GIs has been registered in Nigeria, albeit there are quite a few that fulfil all the qualifications. A draft legislation on GIs is incorporated in the Industrial Property Bill before the National Assembly. Like the reviewed Trademarks Bill, there are ample assurances that it will be passed into law and assented in the next Assembly.

4. Utility models

At the present rate of development, Nigeria has significant capacity to generate inventions that qualify under a less stringent form of patentability scrutiny. The incorporation of the registration and protection of Utility model under our industrial property regime is absolutely needed to kick start the appreciation and commercialisation of inventions at start-up level. Understandably, though not subject and bound by the provisions of the TRIPS agreement, nevertheless, utility model constitutes an under structure and catalyst for the build-up and development of a productive economy.

The pending Industrial Property bill at the National Assembly contains provisions on the registration and protection of Utility Models.

5. Animal breeders rights

Nigeria has significant capacity for plant breeders. Nigeria must join UPOV. Nigeria must pass laws that vest plant and animal breeders with exclusive rights to restrain unfair competition against their breeds and enable them recoup their investments.

5.2.3 Develop regulations for PVP Act (2021)

The Plant Breeders Protection Office, in collaboration with other stakeholders, will develop regulations to operationalise the PVP Act 2021. This will be done in the short term since several issues relevant to the sector will depend on the regulations.

5.2.4 Domesticating international treaties

The three IP offices will prepare a roadmap for domestication of the international agreements, treaties and protocols. The roadmap will include: the prioritized

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treaties/agreements for domesticating and their importance to national development; how best the process will be undertaken, taking into consideration the fears of key stakeholders, and the timelines.

5.2.5 Accessing to UPOV

The PVP Office will in collaboration with relevant stakeholders including the seed industry prepare a roadmap for accession of Nigeria to UPOV. The roadmap will include the importance and benefits this move will have for Nigeria; how best the process will be undertaken, and the timelines.

5.2.6 Develop legislations on traditional knowledge and traditional medicine

There is a significant number of people that rely on traditional medicine TM, rather than orthodox medicine. The development of improved regulatory framework for TM therefore becomes imperative. It is expected that NAFDAC, the statutory body mandated to regulate food, medicines and cosmetics will take up this challenge. The TM practitioners and users may need to push to relevant reforms. TM has been of immense benefit in China, India and some older traditional societies and TM from those territories are in use in Nigeria. Nigerians will benefit if TM is adequately regulated and promoted.

5.3 Strengthen the institutional framework for the administration and management of intellectual property rights

5.3.1 Develop a roadmap for the establishment of the Nigerian Industrial Property Commission

In the short term, through the leadership of the Federal Ministry of Investment, Trade and Commerce, a roadmap for the establishment of the Nigerian Industrial Property Commission. The Commission will be semi-autonomous agency under the Ministry. The roadmap will provide various aspects of the establishment and operation of the commission including justification through a study on the economic importance of industrial property rights in the prioritized sectors of the economy; legal requirement for its establishment, governance and management, resourcing of the commission, and transitional requirements.

5.3.2 Consolidate formal and substantive examination of patent application.

To ensure that only novel inventions are patented and to ensure that specifications offer sufficient disclosure, the patents statute will be amended to introduce a substantive examination in line with all International Agreements, Treaties and Protocols to which Nigeria is a signatory and obliged to comply, but consistent with Nigeria's national interest and objectives. To provide evidence and justification, a rapid evaluation/assessment will be undertaken to document global and regional trends on this matter as well as the benefits that the transition will bring to Nigeria as

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a country and the IP users. This activity will be spearheaded by the Registry of patent and design. To take care of transition, the process will consider the following:

- a. Collaboration between the patent Registry, NOTAP and selected universities towards the establishment of sectorial substantive examination, where expertise lies should be commenced towards preparation for specified inventive sectors.
- b. The relevant supervising ministry must commence discussion and negotiations towards adopting certain external Examination Offices, for a specified period, to train and conduct substantive examination on areas where internal capacity are found wanting.

This activity will be spearheaded by the Registry of Patent and Design.

5.3.3 Develop and implement a plan for automation of IP registration

All the three offices will prepare and implement a plan for automation of IP registration process and related administration activities. The Patent and Trademark Registries are partially automated. However, this is only with regards to their filing system. This procedure has not been extended to payments and other forms of records. The Design aspect of IP lacks any form of automation. Presently, there is a WIPO assisted initiative on electronic data capture and filing programs in both Registries. While data capture is a pre-requisite for the effective and efficient operations of the Registries, the WIPO industrial property administration system (IPAS) deployed in Nigeria is materially and procedurally different from the internally contracted online filing system that has been in operation for several years. Therefore, there is a need to marry the WIPO IPAS system with the online registration platform towards the deployment of a singly effective automated system.

5.3.4 Develop and implement a plan full operationalization of Plant Varieties Protection Office

To promote the development of PVP system, will prepare a plan for the PVP Office has prioritized for the next 5 years that will include the following: advocate for deposition of Nigeria's instrument of accession; develop the PVP regulations; design the set-up of a practical, cost-effective, reliable and digitally serviced PVP system, from application to the granting of plant breeders' rights, support the implementation of the PVP system, including the establishment of a PVP office and facilities for testing for distinctiveness, uniformity and stability (DUS), engage in human and operational capacity development of staff of involved organizations; create awareness and ensure ownership in PVP with seed sector stakeholders at all levels; and address relevant issues such as the benefits of PVP, and the link between PVP, the seed law and variety release modalities.

5.3.5 Develop and implement a plan for strengthening the human resource capacity of the three IP offices

The IP offices benefit from WIPO trainings and from trainings from regional and national IP offices such as the EU, the US and ARIPO. There is sufficient capacity in the IP offices and in Nigerian universities to further increase efforts at capacity building. Professional organizations, trade associations, right holders' firms including the Nigerian Bar Association, Intellectual Property Law Association and law firms can also continue to enhance the human resource capacity of the IP offices.

5.4 Enhance generation and protection of intellectual property rights

5.4.1 Enhance funding for R&D and innovation in academia and industry

The National Universities Commission will work with relevant government agencies to prepare a resource mobilization strategy for R&D activities. In addition, NUC will introduce a scheme to support individuals and organisations that are unable to pay for the cost of filing and maintaining applications and/or legal costs for IP protection and make it mandatory for universities to collaborate with each other, research institutes, the private sector and funding to stimulate local production of the results of their R&D. In addition, the initiative of NOTAP in assisting university inventors and innovators through IPTTO's to process their patent application should be strengthened. Also, efforts should be made by TETFUND to increase the amount allocated as research grants to researchers and make the application process more user friendly.

5.4.2 Promote recognition and use of IP for promotion of researchers

National Universities Commission in collaboration with Universities Vice-Chancellors Committee will come up with a programme to ensure that the use of IP application and registration for the purpose of promotion of university Lecturers and Researchers is incorporated in the human resource policies in all universities and tertiary institutions.

5.4.3 Support more universities and research institutions to established IP policies and revise existing policies

NOTAP has published Guidelines on Development of institutional IP Policy for universities and R&D institutions. These guiding principles highlight how each R&D institution can formulate and implement its IP Policy to protect tangible research products such as inventions, industrial designs, and Know-How, to make them demand driven and economically viable. The Vice Chancellors Committee in collaboration with the Nigerian Copyright Commission (NCC), has also come up with model IP guidelines. In the short-term implementation of this policy, NOTAP working closely with the National Universities Commission, the Vice-Chancellors Committee, and NABTE will develop and implement a plan of action to ensure that all

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Universities, Polytechnics and Research Institutions formulate and implement IP policies and those that already have them will be supported to revise their IP policies. The Commission will ensure that offers fair remuneration and reward into employees and commissioned persons for their inventions and creativity.

5.4.4 Increase the use of patent information system for research and innovation

The Patent and Design Registry in collaboration with NOTAP, will prepare a framework for coordination of efforts between the relevant government agencies, universities, research institutes and the private sector aimed at encouraging businesses and SMEs to use patents which are in the public domain for research, innovation and exploitation.

5.4.5 Support the development of human resources for management and protection of IP in universities and research institutions

IP agencies (NCC, Patent and Design Registry, Trademark Registry) to assist universities and research institutes to prepare a plan for developing human resources for IP management and protection in these institutions.

5.4.6 Develop a framework for strengthening linkages between universities and industries

IP offices (NCC, Patent and Design Registry, Trademark Registry) and NOTAP to work with various industry association to develop a framework for strengthening linkages between academia and industries. The framework to include the following:

- a. The use of incentives by government to promote collaborative IP generation and commercialization efforts between universities and industry like tax reduction on companies that patronize local researchers and collaborate in R&D efforts of universities. This could be done by government in the medium term
- b. Provision of seed funding for marketing activities such as participating in trade fairs and other forums by TETFUND. This could be achieved in the medium term.
- c. Establishment of mechanism to help MSMEs and Universities to validate pilots and scale up through market testing. Collaboration of SMEDAN with the Universities could get this achieved in the medium term
- d. Promoting the engagement of companies in private sector in R & D efforts of universities.

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5.5 Strengthen capacity and institutional support for technology transfer and commercialization of intellectual property rights

5.5.1 Develop and implement a plan for capacity building of IP professional service providers

To address the inadequate/lack of IP professionals to support commercialization and technology transfer, the three National IP Offices in collaboration with NOTAP and the National Centre for Technology Management (NACETEM), will develop and implement a plan to train professional service providers in valuation, licensing, and auditing intellectual property assets as well as technology management and negotiation. This could be achieved through the existing workshops/ conferences programmes of NOTAP and the various technology management training programmes initiative of NACETEM.

5.5.2 Develop and implement a national IP commercialization framework

To enhance technology transfer and commercialization of R&D results, within the framework of this policy, NOTAP working closely with the National Universities Commission will prepare a national framework for commercialization and technology transfer. The framework will look at all aspects of commercialization including addressing research uptake, weak linkages with industries, resourcing of technology transfer office, the role of government in supporting technology transfer and commercialization. The framework will ensure that all Nigerian universities and research institutes must be encouraged to establish and properly staff and run technology transfer offices TTOs. The TTOs must engage these institutions on their research drive and the private sector and funding organizations and persons with a view to commercializing their findings. The TTOs must form a network and share knowledge and information without compromising relevant confidential information.

5.5.3. Develop and implement a plan for strengthening the capacity of NOTAP

The National Office for Technology Acquisition and Promotion (NOTAP) has been implementing a project - Establishment of Intellectual Property and Transfer of Technology Office (IPTTO) by the in Universities, Polytechnics and Research Institutions with the task of promoting interaction and strengthen the linkage between University/Research institutions and industries develop a robust IPRs portfolio through patenting, copyright, technology licensing and supporting the development of patent culture. Although there are positive impact of the IPTTO project in the tertiary institutions and research institutes, the full potentials of the project is yet to be realized due to a number of factors which include: inadequate funding, lack of human capacity and infrastructure for their operation, and relatively poor IP awareness in the tertiary education community in Nigeria and their biased focus on industrial property and lamentable neglect of copyright. During the short-term period, NOTAP, in collaboration with other partners will develop a plan for strengthening its capacity to enhance service delivery.

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5.5.4 Develop and implement a plan for promoting the growth of start-ups and innovation hubs in Nigeria

To enable the strengthening of the Nigerian Innovation Ecosystem, the government will develop guidelines for supporting the growth, management and coordination of start-ups and innovation hubs. In this regard, the Nigeria Startup Bill (NSB) has been approved by the Federal Executive Council and forwarded to the National Assembly, in addition to the proposed legislation, the Federal Government has approved tax reliefs for startups with the aim of enabling the implementation of strategies to encourage and support the development and growth of more innovation-driven enterprises (IDEs) in the country. The Startup Bill and the Tax relief aims to actualize the mission encapsulated in the National Digital Economy Policy and Strategy (NDEPS) for a digital Nigeria and spearheading these efforts are various MDAs, more particularly, the Ministry of Science and Technology and National Information and Technology Development Agency (NITDA). Once passed, the development of the regulations to support the implementation of the start-up Act will be required.

At the state level, attempts are being made by the Lagos State Government in collaboration with Eko Innovation Centre and other experts to address critical business challenges being encountered by innovative Tech Entrepreneurs and young Innovators in the digital sphere through the Lagos digital innovation ecosystem startup hub. This model should be reviewed and promoted in cities.

The University of Nigeria has also commenced an Incubation Program for startups by offering a 3 month Intensive Training Program aimed at supporting top notch and Innovative Startup Ideas across Nigeria. This model should be reviewed and promoted in other universities.

5.5.5 Develop and implement a plan for commercialization of TK and TM

The government will prepare a plan for commercialization of TK and TM which will include the following:

- a. NAPRD undertaking an aggressive collaborative engagement with the Pharmaceutical Companies for the production of the results of their R&D.
- b. The National Natural Medicine Development Agency embarking on a comprehensive database of Nigerian herbal and cosmetic remedies and engage with universities, research institutes and relevant local and international private sector organisations towards further research and commercialization of Nigeria's bio-diversity.
- c. The NUC encouraging universities and research institutes to link up with the Raw Materials Development Council in ascertaining the level of findings in order to avoid duplication and re-inventing the wheel and to identify areas where improvement can be made to existing knowledge and including TK and TM in science, pharmaceutical and medical curriculum in order to promote the co-recognition and co-existence in health or medical investigation and practice.

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- d. The federal, State and Local governments offering land and offer financial support for the sensitization of public to the economic benefits of TK and IP in general.

5.5.6 Develop a framework for promoting the use of IP as collateral for resource mobilization

The three IP Offices will work with the Federal Reporting Council of Nigeria and the accounting bodies must to support public companies to assess their IP assets when preparing financial statements. The three Offices will also work with the CBN and financial institutions to introduce and embrace the recognition of IP and IP assets as collateral and security for loans, and as monies worth in paying for shares and the like.

5.6 Strengthen capacity and institutional support for technology transfer and commercialization in the creative sector

5.6.1 Undertake a study on the contribution of the copyright sector on the economy

The creative industry has huge potentials to contribute to national economic growth and development particularly in economic diversification, employment, income generation etc., but the economic impact of these industries has not really been studied. A study of the economic contribution of the copyright-based industries to national economic growth and development needs is recommended to have a clear picture of the huge potentials of this sector, and the vital role it could play in facilitating the realization of government policy goals. The Nigerian Copyright Commission will partner with the World Intellectual Property Organization to undertake a study on the contribution of the copyright sector to the socio-economic development of the country and use the results to mobilise more support for the sector. The study will be undertaken during the first and second year of the policy.

5.6.2 Strengthen selected government schemes for the creative industry

There are several government schemes that provide financial and capacity building programs to enterprises. These include the Bank of Industry Fund for Nollywood, Creative Industry Financing Initiative (CIFI), Youth Empowerment Support Programme, Youwin Connect Nigeria, Government Enterprise and Empowerment, Graduate Entrepreneurial Fund, Federal Government of Nigeria Special Intervention Fund for MSMEs. However, apart from the Nollywood Fund, and the (CIFI), all the other schemes are not creative industry specific. There is need to strengthen the Nollywood fund, establish similar funds for other sub-sectors of creative industry, and broaden the scope of the CIFI to cover the entire creative industry. The specific activities that will be undertaken may include the following:

1. Government through the Bank of Industry needs to review the policy framework for these funds to increase the amounts accessible by film

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producers from the Nollywood Fund and remove bottlenecks hindering access to the funding facilities.

2. The policy framework for the CIFI which is the latest finance intervention by the Government needs to be reviewed to broaden its scope to cover the entire creative industry.
3. The Bank of industry and the promoters of these funding initiatives and programmes need to address the acute lack of awareness of these initiatives among stakeholders and potential beneficiaries in the industry. This could be achieved through appropriate enlightenment strategy like directly engaging potential beneficiaries of these initiatives on the platform of stakeholders' associations in the various sectors of the creative industry.
4. Publicity outreach programmes need to be undertaken by the Bank of Industry to Universities, tertiary institutions and the National Youth Service Corp orientation camps across the country to create awareness of these funding initiatives among young graduates.
5. The Small and Medium Enterprises Development Agency (SMEDAN) needs to reboot some of its schemes for promoting MSMEs, and collaborate with the Bank of Industry in order to facilitate access to the Bank's funding schemes and other funding schemes which the creative industry could benefit from, by proactively reaching out to entrepreneurs in the creative industries.
6. The CBN which has emerged as the initiator of these initiatives through the Bank of Industry, should create a platform to feel the pulse of stakeholders and targeted beneficiaries of these initiatives by way of regular feedbacks on their impact, challenges being experienced, and suggestions to improve their implementation for greater impact. The SMEDAN could also be part of this programme.
7. Government through the Federal ministry of finance needs to review fiscal policies negatively impacting the creative industry like the high import duty on printing materials that is turning out to be a major encumbrance to the development of the Nigerian publishing industry.

5.6.3 Strengthen selected government agencies for the creative industry

Business support system is still a big challenge for players in creative industries. Government agencies established to provide business support services such as the SMEDAN, NEPC, NCAC, and NFC should collaborate with stakeholders and come up with appropriate strategies to enhance their effectiveness. In this respect:

- a. SMEDAN need to revive the SMEDAN initiatives and adjust their focus to be more accommodating to the creative industry.
- b. NEPC need to expand its services to include the creative industry by coming up with appropriate initiatives to harness the potentials for export.
- c. NCAC needs readjustment of institutional perception of the creative industry as instrument for national economic growth and development and thus develop appropriate initiatives that could facilitate the realization of this.

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- d. A National Film Development Fund should be established to provide grant support and soft loans for equipment acquisitions, infrastructural development such as cinema and community theatres.
- e. The Nigerian Film Corporation Law should be reviewed to reform and reposition the Corporation for effective and efficient service delivery in accordance with the best global practices as a commission. This will enable it to be the government prime agency to drive the regulation, growth and development of the Nigerian film Industry.

5.6.4 Develop and implement a plan for strengthening the capacities of the Collective Management Organizations

To enhance the efficiencies and effectiveness of the operations of the CMOs, the NCC in collaboration with the CMOs and other partners including WIPO, will develop and implement a plan for strengthen the capacities of the collective management organization and also awareness and outreach programs to sensitize users on their obligations to pay for use. Furthermore, collective management organizations (CMOs) should come up with effective strategies of enforcing the rights of authors and encouraging users to pay for the use of copyright works. This can be achieved through capacity building programs to enhance understanding of paying for use of copyright works by the users.

5.6.5 Develop and implement a plan for enhancing the role of sub-nationals on development and promotion of the creative sector

Efforts towards making the creative industry more relevant to national development agenda, has mainly been from the Federal Government. Although, there are commendable initiatives at subnational levels from some States, a lot still needs to be done by these two tiers of government; states and local governments. This even becomes more important, when the fact of their being closer to the key players in the industry and thus strategically positioned to identify and reach out to them is taken into consideration. This “up-to-bottom” approach instead of the “bottom-up” approach to galvanize and effectively harness the industry for national economic growth and development has not really been helpful to the industry.

States and local government’s needs to be mobilized to give necessary support for the creative industry in their domain. A means of doing this is to give them robust recognition by identifying the vital role they can play and the benefits they stand to gain through promoting and supporting the creative industry in their domain in any national policy aimed at addressing the issue. In the Medium Term, the NCAC and NCC, in collaboration with other agencies and stakeholders, will develop and implement a plan on enhancing the role of sub-national on the development and promotion of the creative industries.

5.6.6 Enhancing coordination of agencies responsible for copyright and related rights

The creative industry is regulated by many government agencies. These are: the Nigerian Copyright Commission, the National Film and Video Censors Board, the Nigerian Council for Arts and Culture, and the Nigerian Broadcasting Commission. Although, the Nigerian Copyright Commission is the key government agency statutorily saddled with the responsibility of protection, administration and enforcement of Copyright in Nigeria which is a positive development, stronger ties with other regulatory agencies are recommended to boost the regulatory framework of the industry. These Agencies will be required, in the medium term, to develop a framework for enhancing coordination amongst them to increase efficiency and effectiveness in service delivery.

5.7 Strengthen technology transfer and commercialization of new plant varieties

The PVP Office working together with stakeholders will develop and implement a plan for promoting commercialization of plant varieties rights in Nigeria. The strategy will include the following:

1. Funding support for plant breeders and researchers for the development of new plant breeds
2. Awareness creation on the commercial value of new plant varieties among researchers and plant breeders
3. Enlightenment of plant breeders on the value of their IPR s and the imperative of proactively taken steps to protect their rights under the plant variety protection law
4. Making the plant variety protection regime user friendly through initiatives like low registration cost.
5. Creation of a national data bank that is easily accessible on new plant breeds with information on their agricultural/economic value
6. Agricultural extension agencies/workers to be regularly updated on the emergence of new plant varieties, its potentials in terms of value to farmers, and the need to encourage patronage by farmers.
7. Subsidy regime to be provided by government for the acquisition of seeds of new plant varieties to make it more affordable and attractive to farmers.

5.8 Strengthen enforcement of IP rights

5.8.1 Develop a stand-alone legislation for IP enforcement

The three IP offices (Copyright Commission, Trademarks Patens and Designs Registry) together with the relevant stakeholders will develop roadmap to realize the enactment of a standalone legislation on IP enforcement. The roadmap will provide, amongst others, the justification, global and regional trend, scope and coverage. The

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roadmap may also include undertaking a study on the impact of infringement (counterfeit and piracy) on the economy of Nigeria.

5.8.2 Establish tribunals for industrial property rights

The Trademark Registry will come up with a roadmap for establishing and equipping Trademark Tribunal to deal with opposition hearings. The hearing Tribunal within the Trademarks Registry dispensation must be made easily accessible by setting up of Tribunals and putting in place rotational Tribunal sittings within the geopolitical regions of the country.

The Patents and Designs Registry will also come up with a roadmap for establishing and an Administrative Panel with will act as an ADR to resolve dispute arising from the grant of Patents and Designs Right. The said Administrative Panel should over time be made easily accessible by setting up of Administrative Panels and putting in place rotational Administrative Panel sittings within the geopolitical regions of the country. Establishment of an independent Board of Appeal to handle appeals from the Registrar of Trademarks, Patents & Designs /Tribunal and Administrative Panels and if possible, with expanded jurisdiction to entertain infringement, passing-off and other IP related cases.

5.8.3 Regional approach to enforcement

A regional approach is recommended to provide stronger interagency cooperation for cross boarder piracy activities and harmonisation of IP enforcement strategies for checking cross-border violation of copyright. A roadmap will be required to demonstrate how this can be realized. NCC and the Custom Service will spearhead this. The Custom Service already have an existing platform for interacting with Custom agencies in neighboring west African countries under the platform of ECOWAS which could be utilized by NCC through collaborative efforts.

5.8.4 Enhance the use of technologies and innovation on enforcement

The issue of enforcement cuts across all IPRs, the NCC will focus on the enforcement of copyrights for literary and artistic works while the Trademarks, Patents and Designs Registry will undertake the review of laws to tackle Industrial Property Rights (i.e. trademarks, Patents and Industrial Designs Rights) infringements and enforcements.

The Copyright Commission and the Trademarks, Patents and Designs Registries will undertake to prepare and plan for adequate enforcement mechanisms and will review current anti-piracy measures will be undertaken in order to prepare a plan for enhancing the use of adequate technology for anti-piracy operations. The NCC by undertaken a study of the current antipiracy efforts to identify the enforcement gaps and thereafter introduce appropriate technology-based solutions. Finding out

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best practices in this respect by tapping from experiences of other countries would also be beneficial.

5.8.5 Develop and implement a plan for strengthening the staffing capacity of NCC

To enhance the capacity of NCC to handle enforcement, the NCC in collaboration with other partners will come up with human resource plan that will document the number, qualifications and skills of staff required to effectively deal with piracy, propose ways of their recruitments, deployment, and capacity building.

5.8.6 Undertake a feasibility for establishing a single IP enforcement agency

A feasibility study will be undertaken to provide evidence on the need and benefits of establishing a single IP Enforcement Agency to enhance coordination and effectiveness of implementation of enforcement measures in the country. Though at the administrative level this may seem challenging, it can be achieved if such agency is operated within the ambit of the Board of Appeal to enforce the decisions of the Board. This feasibility study can be jointly commissioned by the intellectual property offices.

5.8.7 Develop and implement a training and awareness programs for key stakeholders' enforcement officials the public and consumers

The development of the jurisprudence of IP is being undermined by the fact that many of the judges of the Federal High Court that has exclusive jurisdiction over IP matters have never study the subject. As a matter of fact, the first time some of them will have contact with the subject was when dispute on IP matters was brought before them. It is recommended that IP capacity building programs such as courses, seminars and workshops, for judges should be designed by IP training institute like the Copyright Institute, the Nigerian Institute for Advanced Legal Studies, the National Centre for Technology Management (NACETEM), and if need be, in conjunction with the WIPO Academy, and implemented in collaboration with the National Judicial Institute. The Chief Judge of the Federal High Court also should be engaged to explore the possibility of designating some courts as IP courts as specialization could be a means for boosting human capacity. This action will be spearheaded by NCC through the Copyright Institute as well as the Patent and Design Registry and Trademark Registry

Familiarity courses and CLE should be promoted by the National Judicial Institute as a mandatory requirement for judges handling IP related matters. In the medium term, to stimulate growth in these areas, judges should be appointed and assigned to designated IP courts on the basis of their expertise on IP matters.

5.9 Strengthen IP training in Nigeria

5.8.1 Develop and implement a plan for enhancing IP training in universities and tertiary institutions

The knowledge of IP in Nigerian tertiary institutions and research institutes is very poor. Apart from a few universities where IP is taught mainly in the Faculty of Law, many universities and research institute are not mindful of the importance of IP and its multi-disciplinary nature. Concerted efforts must be made to promote the teaching and research in IP in the tertiary institutions and research institutes. The National University Commission and National Board for Technical Education (NABTEB) and the National Commission for Colleges of Education (NCCE) should be engaged on the possibility of exploring curriculum development and mainstreaming IP into their entrepreneurship programmes and general studies. This will include:

- a. introducing IP curricula of departments other than law especially in the relevant arts and science related departments in Nigerian universities.
- b. with training assistance in respect of short term training on courses for management and protection of IP within a short term
- c. NUC directing Universities to introduce IP as an essential component of their general studies programme/ courses within the short term
- d. NABTE directing polytechnics to introduce IP as an essential component of their general studies programme/ courses within the short term
- e. NCCE directing Colleges of Education to introduce IP as an essential component of their general studies programmes / courses within short term
- f. Research institutions could introduce regular IP training programs for their researchers. This could be achieve within a short term
- g. Universities and research institutions could strengthen IP Teaching, research and training in collaboration with WIPO, WTO and other international organizations and reputed foreign universities. This could be achieve in the short term
- h. Strengthening IP Chairs in universities and institutes of higher learning to provide quality teaching and research
- i. Universities to develop distance learning and on-line courses on IP for all category of users. This can be done in the short term
- j. Universities and research institutes to formulate and develop their institutional IP policy/ strategy

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5.8.2 Develop and implement a plan to strengthen Nigerian Copyright Institute

The NCI and partnership with other stakeholders, to develop and implement a plan to strengthen the capacity of the Nigerian Copyright Institute to offer capacity building to all sectors of copyright industry.

5.9. Promote IP awareness to stakeholders and general public

5.9.1 Develop and implement IP awareness and outreach plan for industrial property

NOTAP and the two Registries to work with WIPO to prepare outreach and Awareness creation programs for the players in the industrial property sector.

5.9.2 Develop and implement IP awareness and outreach plan for copyright sector

The IP awareness among stakeholders in the creative industry in Nigeria is very low and it is a key factor in the obvious gulf that exists between the regulator of the industry like NCC and owners of right. Without synergy between the two parties, effective enforcement will always be challenging. It is recommended that the regulatory agencies need to embark on a robust IP awareness campaign. Outreach programmes to researchers, academics, politicians, chambers of commerce etc. and even the right holders need to be organized to tackle poor IP awareness in the country. Efforts in this respect could be geared towards developing and implementing target-oriented IP popularization programs; organizing or taking part in programmes such as exhibitions in cooperation with institutions such as chambers of commerce to show the benefit of the IP system. Also, assistance could be given to research and academic institutions in developing IP policies and establishment of IP management Units. Journalist also could be encouraged through sensitization training on IP and the use of mass media for IP awareness.

5.9.3 Develop and implement IP awareness and outreach plan for seed sector

The PVP Office together with other stakeholders will prepare and implement IP awareness and outreach plan for the seed sector.

CHAPTER SIX: IMPLEMENTATION STRUCTURE

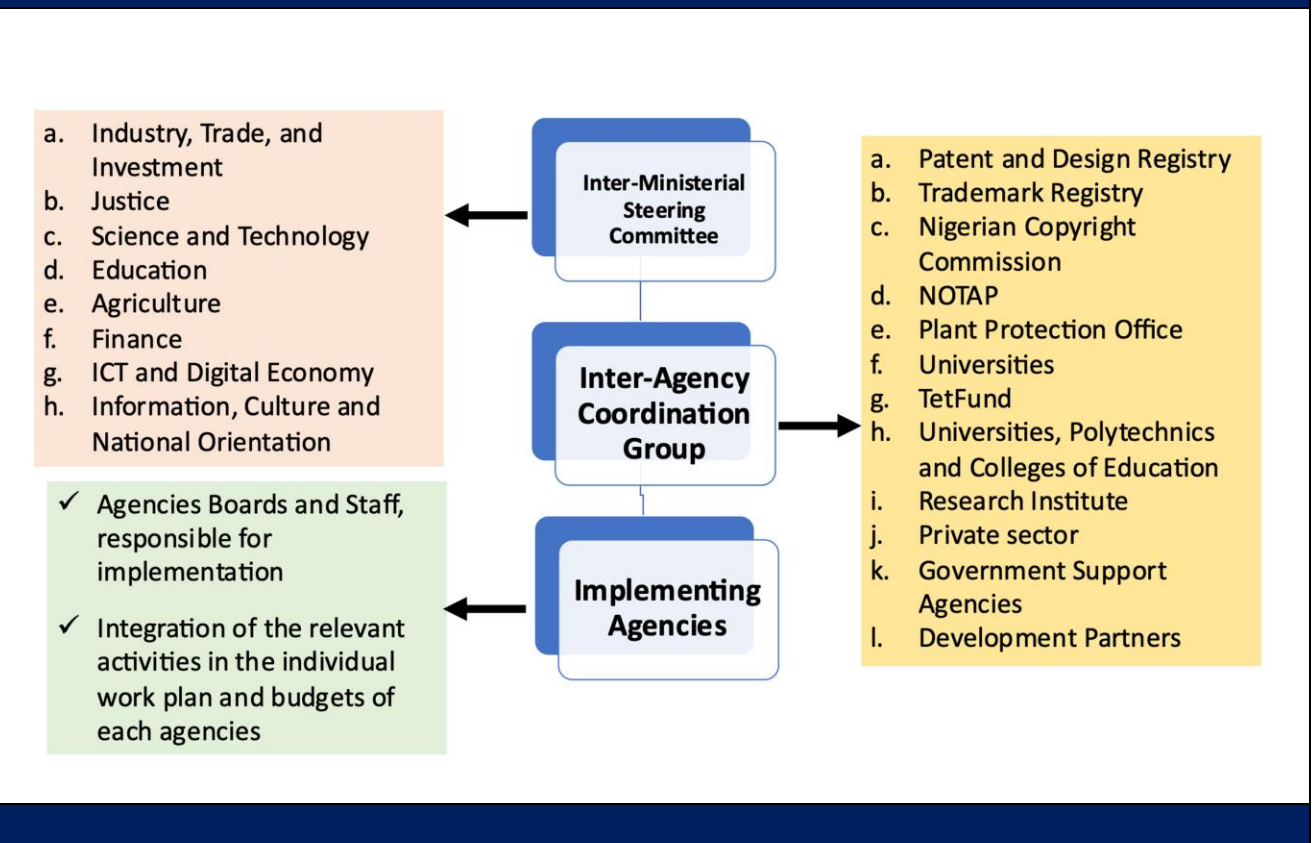
6.1 Introduction

The successful implementation of the Nigerian Intellectual Property Policy and Strategy will require multi-layer effective coordination of all the stakeholders involved, creating awareness and publicity on the policy, mobilizing resources to implement the policy and effectively monitoring and evaluation the progress made and documenting lessons learnt. These are briefly described in this chapter

6.2 Institutional framework

The implementation of the IP Policy and Strategy will involve several partners and hence the need for a framework for the effective implementation, coordination, and monitoring. The proposed institutional framework will consist of the Inter-Ministerial Steering Committee, Inter-Agency Coordination Group, and teams at the level of Implementing Agencies (Figure 6.1):

Figure 6.1: Proposes structure for the implementation of the National IP Policy and Strategy



6.2.1 Inter-Ministerial Steering Committee

The Inter-Ministerial Steering Committee will consist of six ministries, directly involved in the implementation of the IP Policy and Strategy. These are ministries of Trade, Commerce and Investment, ministry of Justice, ministry of Agriculture, ministry of Science, Technology and Innovation, ministry of Education and ministry of Finance. The committee may co-opt any other ministry, where necessary. The main mandate of the committee will be to provide the political oversight of the implementation of the policy and strategy and also help in mobilizing the required resources from the government and development partners. This committee will be co-chaired by ministry of Trade, Commerce and Investment and ministry of Justice.

6.2.2 Inter-Agency Coordination Group

This group will be formed from the implementing agencies. All implementing agencies will have a focal person or persons. These persons will form the Inter Agency Coordination Group. The Inter-Agency Coordination Group will be co-chaired by the representative of Trade, Commerce and Investment and Ministry of Justice. The Group will be the technical wing of the steering committee and will coordinate the implementation of the IP Policy and Strategy and reporting to the steering committee.

6.3 Implementing Agency

Each Agency will develop their work plans and indicators for monitoring the projects they are undertaking. This may require incorporating the NIPPS activities in their strategic plan and budgets. The monitoring and evaluation will be done quarterly at the Agency level and reports prepared for presentation to the Inter-Agency Coordination Group.

6.4 Communication

Communication will be key in the implementation of the IP Policy and Strategy. This policy and strategy should be widely disseminated. The dissemination will involve a number of institutions and will take some time. The level of dissemination will include, among others, all institutions that are involved at each level of coordination of this IP Policy and Strategy. Upon approval of the Policy and Strategy a comprehensive communication strategy will be developed. The communication will cover all stakeholders such as ministries, government agencies, educational institutions, research institutions, other stakeholders, and the public.

6.5 Resource Mobilization

The implementation of NIPPS will require resources. The resources will be drawn from The Federal Government, Local Governments, development partners, private sectors, and other collaborators. A resource mobilization strategy will be developed by the Inter-Agency Coordination Group, upon approval of the policy.

6.6 Monitoring, Evaluation and Reporting

A monitoring, evaluation and learning (MEL) framework will be developed by the Inter-Agency Coordination Group, which will be used to monitor progress and communicate the same to the Steering Committee. Each Agency will develop their own MEL framework based on the overall one.