Intellectual Property Enforcement in Africa: Are Regional IP Organisations the Way to Go?

By:

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The book, Enforcement of Intellectual Property Rights in Africa (Oxford University Press, 2020), comes at a timely moment when the African continent is in a very critical stage of pursuing sustainable economic growth. Intellectual property rights have been prioritised continentally, regionally and at domestic levels as being a key part of this desired growth. The importance of IP rights has been magnified by the rapid advancements in technology and the 4th industrial revolution, a time when innovation and creativity are commonplace. At the time of publication of the book, very little has been done in terms of concerted efforts towards establishing an umbrella regulatory body that harmonizes how key intellectual property rights are recognised and enforced on a continental scale in Africa. Instead, most African countries have opted to either take regional or individual steps towards the protection and enforcement of intellectual property rights. In the sense of concerted efforts, most states adhere to exclusive multilateral agreements that run concurrent to other

agreements of the same nature in different parts of the continent. In this sense, a disjointed approach to IP rights regulation and enforcement may be thought of as being a retardant to the overarching goal of concerted sustainable economic growth.

Presently, the continent is pressed with the agenda of achieving the African Continental Free Trade Area (AfCFTA) which seeks to create a single continental market for goods and services. This further entails the free movement of business persons and investments, and therefore intellectual property is bound to be exchanged or exploited in the process. Therefore, where a harmonised approach to IP rights cannot be achieved, the book can be seen as being instrumental for those who seek to understand how the various IP protectionist regimes operate in the African context as it goes into detail about the different approaches taken by individual countries on the continent as well as detailing the procedures and enacting provisions adopted by organisations such as the African Regional Intellectual Property Organization (ARIPO) and Organisation Africaine de la Propriete Intellectuelle (OAPI). ARIPO and OAPI are currently the two African regional organizations that are responsible for managing the different forms of intellectual property in the region. Therefore, of particular interest to me and for the purposes of this review, I have focused on the chapters on OAPI, ARIPO and South Africa.

The chapter on ARIPO starts off by giving a brief background on the foundations of ARIPO from the time it was proposed as the Industrial Property Organization for English-speaking Africa (ESARIPO) to what it is today and the underlying justifications for the lobbying for such an organisation. The chief justification being the potential advantage to be derived from the effective and continuous exchange of information and the harmonization and coordination of the laws, policies, and activities of Member States in respect of intellectual property matters. The chapter also highlights that despite ARIPO being an exclusive membership organisation, and in line with the Lusaka Agreement, ARIPO does cooperate with non- Member States, some of which have observer status in its meetings or ARIPO’s main organs. The chapter also outlines the ways in which countries may join ARIPO under its current regulations and goes into detail about the various organs of ARIPO, their functions and who the current chairs of each organ are at the moment. An important aspect highlighted in this chapter is the registration process of industrial property under each of ARIPO’s listed

protocols including the costs and the effect of registration/extent of protection and the examination processes involved. It further details the processes involved where objections or oppositions are encountered in respect of ARIPO trade mark, patent, and industrial design applications. This is complemented by the enforcement procedures recognised under ARIPO, particularly that for enforcement, the organisation relies on each member to domestically enforce IP rights as ARIPO is not mandated to enforce IP rights amongst member states.

The chapter on OAPI, much like the one on ARIPO starts off by giving a factual background of the Organisation from the time it was referred to as the African and Malagasy Office of Industrial Property (OMAPI), the departure of Madagascar and how the attribution of new competences in the area of copyright, and the need to interlink intellectual property with development soon created a need for a revised agreement which gave rise to OAPI in Bangui in 1977. It highlights how under OAPI, which was initially meant to cater for the French-speaking African countries, all Member States apply a uniform law, the Bangui Agreement and its ten annexes, with a common administrative procedure giving rise to unitary intellectual property rights. There is no coexistence of a national protection system with the regional system as all countries, upon joining OAPI, waive their right to national filing.

The chapter also outlines how OAPI deals with the administrative matters pertaining to the registration, maintenance, and upkeep of unitary IP rights such as patents, trade marks, etc, the registration procedures, opposition procedures and the various enforcement mechanisms. I particularly liked the breakdown of the Bangui agreement, what it covers and all the other treaties which member states are expected to adhere to. This is in addition to the discussion on the search and seizure proceedings as well as customs detention with a key emphasis on counterfeit combatting and licensing. To this end, the chapter also outlines the remedies available, the available defences, criminal action, procedure, as well as the sanctions which are codified by OAPI.

The chapter on South Africa starts off with the helpful breakdown of the socio-economic makeup of the country e.g. population, bordering countries etc. and the relevant authorities that deal with the regulation and enforcement of IP rights. Of particular importance, the chapter discusses the publication of the 2018 draft Intellectual Property Policy of the Republic of South Africa, Phase 1

('IP Policy'), as part of the National Development Plan 2030, which focuses on innovation, improved productivity, the intensive pursuit of a knowledge economy, and the better exploitation of comparative and competitive advantages. For one who is not knowledgeable about the current IP regime in South Africa, such a discussion is important in also shaping one's idea of the general direction in which the country wishes to develop its IP regime. For potential investors, this gives valuable insight and may ultimately influence the decision to invest or not within that kind of environment. The chapter further breaks down how individual IP rights are enforced, the requirements for protection as well as the remedies under civil and criminal law and the exceptions that apply. The chapter also discusses the Counterfeit Goods Act and explores the unfair competition angle as well as customs enforcement, procedures, and civil and criminal law proceedings.

The importance of looking at South Africa after having gone into and analysed the approaches adopted by ARIPO and OAPI cannot be understated. The same can be said for the rest of the countries that are not member states of either ARIPO or OAPI. For example, the absence of Africa's leading economies, South Africa and Nigeria, from the membership of the two sub-regional organizations is problematic. Therefore holistically, the chapters above are a good effort at informing and providing the approaches taken to protect and enforce IP rights from the lens of the two regional organisations as well as from the lens of one of the biggest economies on the continent. Therefore, although a harmonised African approach to regulation is lacking, from a South African point of view, an analysis of the three chapters gives enough insight on the current and future attitudes towards IP rights enforcement and is therefore applauded in this regard.

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