First Approximation for the Black Letter Law and Key Aspects of Practice in IP Enforcement Across Africa

By:

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The preparation of a book like **Enforcement of Intellectual Property Rights in Africa** (Oxford University Press, 2020), is a task that is both Herculean as well as Sisyphean. Herculean, because, with nearly 60 separate jurisdictions to cover, the enormity of the task cannot be overstated. Sisyphean, though, due to the impossibility for a book of this nature to be up to date and accurate; even before it is published, laws and situations will likely have changed in one or several jurisdictions. These two factors were clearly on the minds of the authors.

At over 1000 pages, the scope of the book's content is impressive. The vast amount of information contained in the text is highly accessible due to its methodical and meticulous organization. Law and practice are described for all

55 African nations, as well as two regional IP bodies. Each country is given its own chapter, and the sections of each chapter are consistent so that jurisdictions can be easily compared. Extensive tables of contents, cases, and laws are provided, as well as a detailed index.

Apart from having consistent sections, the chapters are not interconnected. Each chapter is a stand-alone description of the laws and practices in enforcing IPRs in a particular country. This review, therefore, focuses mainly on the book as a whole rather than the contents of any particular section/chapter.

There is extensive coverage of legislation in every jurisdiction. For each country, nuances of the various laws are mentioned and described. While not a substitute for seeking advice from local counsel, this text is an excellent reference and first approximation for the black letter law, as well as key aspects of practice, regarding enforcement across the continent.

Cases are provided from only a handful of countries, and the authors note the lack of digitized records in many countries. This reviewer notes recent efforts by various regional and international bodies in Africa at compiling databases of case law, and hopes that future editions of this text will include more cases. For the cases that are in the text, helpful descriptions of the facts and holding are provided. What is often missing, however, is contextual information that explains *why* cases end with the observed outcomes. For example, the Kenyan case of *Sony Corporation v Sony Holding Limited* is described in the text as having the curious outcome that the Sony trademark is not a well-known mark. The interested reader would need to seek out the case in order to understand the reasoning used by the court to reach this surprising conclusion. This level of detail might simply be impractical for a text of this size.

Most readers will be well aware of the caveats that necessarily accompany a book of this nature; they will know, for example, that the situation in any specific jurisdiction may need to be verified. In some countries, legislative updates are available online soon after they are enacted, but this is certainly not the case in every jurisdiction.

Two chapters provide helpful and contrasting descriptions of IPRs under the two regional organizations, ARIPO and OAPI. While ARIPO is focused on granting of IPR, leaving enforcement to the individual member states, OAPI provides the

legal framework of both grant and enforcement of IPR in the member nations. This distinction is described in good detail, and will be appreciated by readers that may not be familiar with the regional bodies. Indeed, both are increasingly important to the respective regions, and their inclusion here is entirely appropriate.

There is a fairly surprising omission, again probably due to the difficulty of describing IPR enforcement for an entire continent in a single volume. Nearly every chapter contains at least the following sections: enforcement of IPR; enforcement of copyright; unfair competition; and customs enforcement of IPR. Some chapters also contain additional sections, such as for: enforcement of patents; enforcement of trademarks; and protection of trade secrets. But no country chapter contains a section for enforcement of plant breeder's rights (PBR), and legislation protecting PBRs is mentioned in only seven countries. The African economy remains heavily reliant on the agricultural sector, and the relative absence of this form of IPR may leave the reader with many questions (e.g., are PBRs not available, or perhaps not popular, or generally unenforceable on the continent, etc.).

Overall, though, this text is a welcome and useful contribution to the general literature on IPR in Africa. Most, if not all, of the countries of Africa could support a textbook on enforcement law and practice, but this compilation provides a unique platform for comparative analysis. Practitioners, businesspeople, and academics will find this text a convenient source on an increasingly important topic.

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