Enforcement of Intellectual Property Rights in Africa: The Traditional Knowledge and Traditional Cultural Expressions Perspective Matters Too

By:

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Intellectual Property Rights (IPRs) enforcement in Africa holds the power to influence the extent to which foreign and local entities and individuals will register IPRs within and across African borders. Therefore, the book entitled Enforcement of Intellectual Property Rights in Africa (Oxford University Press, 2020), is a timely publication which provides key insights pertaining to IPRs enforcement.

The foreword begins with describing a grim, potentially economically crippling yet realistic picture of the real dangers faced in the African market from counterfeit goods, piracy and IPR infringement in general. The language used is

not overly technical or verbose. Commendably though, this does not water down the seriousness of the publication as it remains rich with legislation, case law and practical experiences. This writing style makes the book suitable for legal practitioners, potential IPR holders, academics, law enforcement authorities, entrepreneurs, and other audiences.

The book frankly portrays African problems in IPR enforcement including disappearing documents, corruption, and low staff salaries. While it exposes vulnerabilities, it makes practical suggestions for rights holders in the chapter ‘Understanding the Real Problem of Fakes in Africa’. It highlights some new technologies in parts of Africa expanded on in later chapters (see Kenya and Nigeria chapters), which demonstrates a willingness to invest in the fight for IPR protection.

The publication is investigative and drills down to specific issues faced on the African continent. It is also organised with good chapter linkages. However, while convenient for comparative purposes, the almost identical arrangement of information in each country chapter becomes monotonous for those reading the book in a linear fashion.

Specific Observations

The discussions on the *Organisation Africaine de la Propriété Intellectuelle* (OAPI) and the African Regional Intellectual Property Organisation (ARIPO) are relevant inclusions. The OAPI and ARIPO chapters present facts with accompanying commentary. The book takes a slightly different turn in the country chapters. It moves more into paraphrasing the different Laws/Acts referred to while the commentary and analysis presented dwindles down. While the research invested in compiling the factual and legislative content in the country chapters is appreciable, if there was a deeper analysis intended of the governing laws and procedures in each country beyond simply bringing their existence to the attention of readers, the book falls short in that regard.

Each country chapter begins with a factual and legal background to set the tone and give context to the country specific information which follows. Some chapters contain serious errors in terms of country’s legal systems, names and locations of key organisations. For instance, the chapter on Zambia describes courts in Zambia as including ‘federal courts, federal member state-level

courts, military courts, and Sharia courts'. This is inaccurate and potentially misleading as Zambia does not run on a federal system neither is its court structure as represented in the book (See Constitution of Zambia Articles 120 – 121 and Article 266, Constitution of Zambia 2016 Amendment Act). This error and similar others may have been avoided by adopting the approach used in the Malawi, Namibia, and South Africa chapters where the country Constitutions were relied on as source documents for court structure and legal systems information.

A Missing Perspective

An important aspect that is omitted in the book is the IPR enforcement discussion from a traditional knowledge (TK) and Traditional Cultural Expressions (TCEs) perspective. The absence of this discussion makes the analysis incomplete. This is more so because the African continent is so rich in TK, TCEs, and biodiversity. TK and TCEs are linked to IPRs in themselves because they may result in inventions, which warrant IP protection. For example, traditional medical knowledge may give rise to patentable inventions, TCEs may give rise to trademark protection, industrial design protection, copyright and other IPRs. TK and TCEs are merely mentioned in passing in a few country chapters such as the chapter on Kenya (page 403) where the Protection of Traditional Knowledge and Cultural Expressions Act of 2016 is named under the legal background section; the chapter on Burundi (page 143) mentions TK when discussing the Department of Industrial Property under the Ministry responsible for Trade and Industry; and the Botswana chapter (page 108) mentions TK when talking about the Industrial Property Act. The most extensive TK discourse appears under the ARIPO chapter (page 34) where there is a brief discussion of the Swakopmund Protocol on Protection of Traditional Knowledge and Expressions of Folklore of 2010 when dealing with the ARIPO legal framework. Alluding to TK and TCEs in this form and to this extent is insufficient considering the demonstrated link between TK and TCEs and IPRs and the equal importance that should be assigned to TK and TCEs when compared with mainstream IPRs.

The exclusion of the TK and TCEs analysis in the case of South Africa, for instance, means the book does not cover Acts such as the Intellectual Property Laws Amendment Act (IPLA) of 2013 and the Protection, Promotion,

Development and Management of Indigenous Knowledge Systems Act of 2019. The IPLA Act amends mainstream South African IP Acts by introducing new categories and terminologies from a TK perspective to bring TK related matters and inventions within the scope of protection granted through different categories of IPRs.

Further, the TK and TCEs perspective is extremely important because the rights holders are likely to include indigenous peoples and local communities (IPLCs). Thus, the focus should not just be on how external investors coming in can enforce rights held but also on sharing information on a rights category that realistically impacts IPLCs as well. With the moves being made in favour of legislative protection of TK and TCEs, and the self-policing nature of IP, there is need to disperse information on enforcement mechanisms for this category of rights and to encourage analytical discourse on proposed enforcement methods. This book could have served as a suitable platform for TK and TCE rights holders to get information on rights enforcement. A failure to interrogate this aspect is a missed opportunity in this publication.

Overall, the book is a useful addition and provides a single location where IPR enforcement information for African countries can be found. Coming editions should include a revision of inaccurate or erroneous information regarding the legal systems in some country chapters and a TK and TCEs perspective in the discussion on the enforcement of IPRs in Africa.

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