Symposium III: The Economic Community of West African States in its Fifties – Looking Back, Look Forward - ECOWAS and Intellectual Property Rights: Reflections and Future Prospects

By:

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Introduction

Five decades on from its inception, the Economic Community of West African States (ECOWAS) stands at a juncture that invites both celebration and reflection. Established with the primary goal of integrating West African countries in pursuit of economic development and regional unity, many agree that the organization has made remarkable progress, even beyond the expectations of its founding fathers. It has grown from promoting economic

integration, to also championing core principles of democracy and good governance.

In this essay, I reflect on an increasingly important and arguably underexplored aspect of ECOWAS's economic development agenda: intellectual property rights (IPR) protection. In a knowledge-driven economy, IPR can play a meaningful role in fostering innovation, attracting investment, and strengthening local industries. While there have been some regional discussions and initiatives, IPR has not always featured prominently in ECOWAS's broader integration efforts. As global and continental frameworks like the AfCFTA Protocol on Intellectual Property continue to evolve, this may be an opportune moment for ECOWAS to engage more deliberately with the IP agenda. This essay considers how the organisation has approached IPR so far and suggests potential areas for deeper focus going forward.

Reflections of Intellectual Property (IP) Development in ECOWAS

When the founding members of ECOWAS agreed on the ECOWAS Treaty in 1975, there were no provisions for or mention of IP or its protection. This omission is understandable, given that IP was arguably not a priority for most West African countries at the time, many of which had only recently gained independence. In fact, post-independence, most of these countries, including those in West Africa continued to adhere to the IP laws introduced during colonialism, replicating laws of the former colonisers domestically.

The Revised ECOWAS Treaty also does not explicitly mention IP or provide for its protection. However, unlike its predecessor, Article 27 of the Revised treaty mandates ECOWAS member states to cooperate in developing and advancing the region's scientific and technological capabilities. It also calls for the harmonization of national development plans, with an emphasis on indigenous and adapted technologies, as well as regulations on industrial property and the transfer of technology.

While the wording of Article 27 is not strictly on IPR, the correlation between IP, technology, and scientific advancement suggests an implicit recognition of IP's importance to the drafters of the Revised Treaty. As such, it could be argued that, in principle, ECOWAS is oriented toward IP development. Asides these mentions, and a guidance document published in 2012 on employing TRIPS

flexibilities to improve access to medicine in the region, IP has remained unregulated at ECOWAS level. However, it has been largely regulated at national, regional and global levels. At the regional level it has been regulated through the two regional organisations; the African Intellectual Property Organisation (ARIPO) and the Organisation Africaine de la Propriété Intellectuelle (OAPI). At the continental level it has been regulated through the AfCFTA Protocol on IP. And at the global level, its regulation has been done through the participation of ECOWAS Member States in various global IP treaties, such as the TRIPS.

Consequently, the IP landscape in ECOWAS is fragmented, reflecting a broader, continental-wide challenge concerning IP regulation. Elsewhere, I describe this fragmentation of IP frameworks as a *spaghetti bowl effect* (a term originally coined by Jagdish Bhagwati), referring to the proliferation of various overlapping IP frameworks in the continent which creates complexities and inefficiencies in IP governance.

Within ECOWAS, Nigeria, for instance, is not a party to either OAPI or ARIPO, unlike other ECOWAS member states. Also, there are variations in the international IP frameworks to which ECOWAS member states are party, with the TRIPS Agreement being the only mandatory and binding framework applicable to all ECOWAS members by virtue of their membership in the World Trade Organisation (WTO). The AfCFTA Protocol on IP represents another potential exception, albeit one that remains work in progress, pending the conclusion of all the Protocol's annexes. As the first significant attempt outside the TRIPS Agreement to unify all ECOWAS member states under a single, comprehensive IP framework, the Protocol holds promise. However, its effectiveness will only become clear once all annexes are adopted and implemented.

A related consideration is whether the regulation of IP at ECOWAS level remains necessary, particularly given the growing number of overlapping IP frameworks across the continent and the recent introduction of the AfCFTA Protocol on IP. This development cast into doubt the additional value a regional-level IP intervention would have, as a continental-wide IP regime may appear to have rendered regional efforts redundant. This was the case with the Agreement establishing the Tripartite Free Trade Area (TFTA) between three African

Regional communities (RECs) namely, the Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC) and Southern African Development Community (SADC), where negotiations for IPR were halted to avoid, as Ncube observes, replicating efforts and negotiations already happening at the AfCFTA level. While a comprehensive analysis of this issue is beyond the scope of this contribution, two interrelated considerations highlight the continued need for and relevance of a coordinated IP agenda at the ECOWAS level, at least as it pertains to cross-border trade.

Firstly, the fragmented nature of IP regulation within ECOWAS could complicate efforts to reach consensus on IP-related chapters during trade negotiations with third parties. Without a unified regional position, reaching consensus on IP-related chapters in trade agreements can become time-consuming and politically sensitive. As I argue elsewhere, the experience of CARIFORUM in negotiating the Economic Partnership Agreement (EPA) with the EU offers relevant and valuable lessons. Although the parties ultimately reached an agreement, negotiators identified the absence of a pre-defined and unified regional stance on IP as a challenge for consensus-building, and by extension, risked undermining the region's bargaining strength during the negotiations. The difficulty here lies not only in aligning technical standards, but in managing competing national priorities across member states. As Putnam's two-level game theory suggests, successful international negotiations often depend on negotiators having secured prior agreement at the domestic or in this case, regional level. Without that internal alignment, negotiators are constrained and may struggle to effectively assert regional interests.

Secondly, and linked to the first reason, is that regional coherence within ECOWAS is essential for ensuring the successful implementation of the AfCFTA Protocol on IP. The AfCFTA Agreement explicitly recognises eight African RECs, including ECOWAS, as building blocs of the broader continental integration project, as outlined in Article 5(b). This recognition reflects a pragmatic understanding that the AfCFTA cannot be operationalised solely through continental-level agreements; it depends on the strength and readiness of regional institutions to translate high-level commitments into coordinated localised action. A harmonised IP framework at the ECOWAS level would play a critical role in aligning national IP regimes, reducing inconsistencies across overlapping legal obligations, and fostering the institutional coherence needed

for effective implementation.

Insights from New Regionalism Theory, particularly the work of Hettne and Söderbaum, reinforce this point. They argue that effective regional integration arises not just from formal agreements, but from deeper institutionalisation and what they term “regionness”—a condition in which shared norms, identity, and capacity transform a group of states into a functioning regional actor. When applied to the ECOWAS context, this perspective highlights the importance of building institutional and legal consistency at the regional level as a foundation for broader integration.

Rather than viewing regional IP harmonisation as separate from AfCFTA implementation, it should be seen as a practical mechanism for aligning national and regional systems with continental commitments. A coherent ECOWAS-level IP framework would not only support legal alignment but also increase the likelihood that AfCFTA provisions are implemented through structures that are already functioning, familiar, and regionally grounded. Put differently, the rationale behind, and attractiveness of having a strong regional free trade zone (such as the ECOWAS’ custom unions and the implementation of the Common External Tariffs), which was subsequently integrated into the AfCFTA tariffs negotiations, equally applies to the need for a regional IP framework to support the broader implementation of the AfCFTA Agreement and Protocols.

Prospects for IP regulation in ECOWAS

It would neither be necessary nor efficient for ECOWAS to create entirely new trade-related IP frameworks from scratch. As such, ECOWAS should avoid attempting to reinvent the wheel in its approach to intellectual property regulation. As previously mentioned, ECOWAS member states are already party to multiple layers of international and regional IP instruments. The more effective path forward lies in harmonising these existing regimes in a way that aligns with broader economic development goals and enhances the region’s overall trade offering.

For instance, beyond the conventional IP categories, scholarly analysis and the long-standing position of many countries of the Global South, including ECOWAS member states under the African Group, point to the need for a global

framework addressing the protection of traditional knowledge, folklore, and genetic resources These are areas of particular interest for the Global South, where such assets have historically been misappropriated, often to the benefit of external actors and multinational corporations, contributing to a persistent imbalance in the global IP system (see for example Okediji; Oguamanam).

In this context, the recent conclusion of the World Intellectual Property Organization (WIPO) Treaty Intellectual Property, Genetic Resources and Associated Traditional Knowledge marks a significant and timely development. It is the first WIPO treaty to address the interface between intellectual property and the rights of Indigenous Peoples and local communities, particularly in relation to genetic resources and traditional knowledge systems. The treaty introduces a new disclosure requirement, under which patent applicants must indicate, where applicable, the country of origin or source of the genetic resources used in their invention, as well as the Indigenous Peoples or local community that contributed associated traditional knowledge.

The new WIPO Treaty is a promising area for ECOWAS to focus its attention, both in terms of advocacy, coordination and implementation, as it aligns with the region's interest in safeguarding its rich cultural and biological heritage within the global knowledge economy. However, the treaty is yet to come into force, pending ratification by 15 eligible member states (Article 17). Currently, no ECOWAS member states have deposited an instrument of ratification, although 7 out of 12 ECOWAS members states have signed the agreement. The organisation could play a central role in supporting and streamlining efforts toward the adoption and ratification of the Treaty by all ECOWAS member states, as well as in integrating its key provisions into trade agreements with third parties, particularly in light of the notable absence of most Global North countries among the Treaty's adopters.

Ultimately, adopting a targeted and evidence-based approach, supported by rigorous impact assessments, is vital for identifying specific sectors where the region holds a comparative advantage that could be further strengthened through IP protection. Prioritising the protection of such assets has the potential to yield significant regional gains, particularly through the promotion of innovation, the attraction of investment, and the development of a knowledge-based economy.

Although the Revised ECOWAS Treaty does not explicitly reference IP as falling within the Community's remit, Article 67 provides a clear legal basis for action. It allows for the harmonisation and coordination of member states' policies in "other areas" to facilitate the effective functioning and development of the Community. On this basis, it is both timely and necessary for ECOWAS to engage Article 67 in relation to IPR, and to consider IP regulation not as an isolated legal matter, but as a strategic tool for economic integration and regional development.

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