

Africa Intellectual Property Newsletter Vol. 79

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News

1. Important topics

Africa: Educate people about how piracy robs Africa's artists, musicians and actors ¹

The chairperson of the Copyright Alliance of South Africa, Chola Makgamathe, made a number of points in a newspaper article:

- Piracy seriously affects music, literature and software.
- Piracy is not a victimless crime - it obviously harms creatives but on a wider scale it decreases consumer and investor confidence, as well as tax revenue.
- The key to tackling piracy is education. In Kenya the Kenya Copyright Board is involved in IP education.
- Laws only work when they are understood - the authorities, therefore, need to make sure that copyright law is clear.

¹ <https://mg.co.za/opinion/2022-10-24-educate-people-about-how-piracy-robs-africas-artists-musicians-and-actors/>

Africa: WIPO resolves to change copyright landscape in Africa²

The Fourth Annual Copyright Symposium for ARIPO Member States and Observer States was held in Harare, Zimbabwe, from 19-21 October 2022. The theme was “*Shaping The Copyright and Related Rights Landscape In Africa*”, and there were delegates from ARIPO member states, as well as observer states.

Sylvie Forbin, Deputy Director General of the World Intellectual Property Organization (WIPO), spoke of the need to have an effective Copyright and Related Rights development in Africa, as well as the readiness of WIPO to support such programs through Copyright Offices and Collective Management Organizations.

Africa: SADC ARVs value chain companies receive intellectual property rights training³

Representatives from 12 companies involved in the manufacture of anti-retroviral drugs (ARVs) in the Southern African Development Community (SADC) participated in a regional training workshop on intellectual property rights.

The event was organized by the SADC and ARIPO, with the support of the Industrialization and Productive Sectors (SIPS) program and EU funding. Participants from the following countries attended the workshop: Botswana, Malawi, Mauritius, Mozambique, South Africa, Zambia and Zimbabwe.

Africa: Intellectual property management will decide the future of companies looking into African trade⁴

An article makes interesting points about IP rights in general and, more particularly, their relevance in Africa.

- The EU is the most important trading partner for Africa.
- France, Germany, Spain, Italy, the Netherlands and Belgium were the largest exporters of goods to Africa in 2021.
- The African Continental Free Trade Area (AfCFTA) represents a great attraction for EU businesses wishing to export to 54 African nations, with \$3 trillion worth of estimated opportunities.
- The EU provides a dedicated Africa IP SME Helpdesk staffed by experts who provide free advice and training sessions on IP issues. This service was launched in 2021 under the management of the EUIPO and is part of the Intellectual Property Rights & Innovation in Africa (AfrIPI) project.

Africa: Experts meet in Nigeria on issues of counterfeiting⁵

Studies by the Organization for Economic Cooperation and Development show that African countries are targeted destinations for counterfeit goods, including pharmaceuticals, foods and beverages.

At an AfrIPI-led meeting in Nigeria, 1-2 November 2022, the focus was the socio-economic implications of counterfeiting and IP infringement, with a particular emphasis on the following product areas: film, pharmaceuticals, alcohol and agriculture. There were attendees from, inter alia, the EU delegation for Nigeria, WIPO and Interpol.

² <https://www.voicegambia.com/2022/10/26/wipo-resolves-to-change-copyright-landscape-in-africa/>

³ <https://www.chronicle.co.zw/sadc-arvs-value-chain-companies-receive-intellectual-property-rights-training/>

⁴ <https://www.euractiv.com/section/politics/opinion/intellectual-property-management-will-decide-the-future-of-companies-looking-into-african-trade/>

⁵ <https://internationalipcooperation.eu/en/afripi/news/experts-meet-nigeria-tackle-counterfeiting-issues>

Africa: A commentary of Titilayo Adebola's Mapping Africa's complex regimes: Towards an African-centred AfCFTA intellectual property protocol⁶

A paper written by Dr. Titilayo Adebola provides an overview of Africa's IP frameworks and discusses the considerations that should be taken into account when drafting the upcoming African Continental Free Trade Area's (AfCFTA) IP Protocol.

Adebola suggests that there will be an emphasis in the IP Protocol on traditional knowledge, folklore and genetic resources – categories of IP that Adebola feels are *'inadequately addressed in existing multilateral trade law instruments'*, and areas where Africa has a *'competitive advantage.'* Adebola says that that the TRIPS Agreement was *'built around traditional Western styles of IP.'*

Africa: International seminar on anti-counterfeiting and intellectual property and their impact on the economy and the environment⁷

On 28-30 November 2022, the Algerian government, together with AfRIPI, hosted a seminar in Algiers on intellectual property and anti-counterfeiting, and their impact on the economy and the environment. This seminar is a component of the IP Action Plan Strategy of the Mediterranean Union.

ARIPO: Communication training on the ARIPO Regional Intellectual Property Rights System⁸

ARIPO presented a communications training course specifically dealing with intellectual property rights in Harare, Zimbabwe on 8-10 November 2022. This course specifically targeted journalists and government information officers, with a view to enabling them to communicate IP and ARIPO issues better.

ARIPO: The 46th Session of the Administrative Council of ARIPO⁹

The 46th session of the Administrative Council of the African Regional Intellectual Property Organisation (ARIPO) opened in Maputo, Mozambique on 21 November 2022. Amongst the attendees – the Director General of ARIPO, Bemanya Twebaze, the Director Generals, CEO's and Registrar Generals of the 22 member states of ARIPO, as well as various other interested parties from around the globe.

The Director General of WIPO, Daren Tang, was the guest of honour. Another important guest was Denis Bohoussou, the Director General of the African Intellectual Property Organization (OAPI), who welcomed the continuation of efforts between OAPI and ARIPO to harmonize their registration systems.

In his address Twebaze thanked the president of Mozambique, Filipe Nyusi, for hosting the conference, which he said indicated that Mozambique takes IP seriously, especially in its role of socio-economic development.

Twebaze went on to make a number of points:

⁶ <https://www.afronomicslaw.org/index.php/category/analysis/commentary-titilayo-adebolas-mapping-africas-complex-regimes-towards-african>

⁷ <https://internationalipcooperation.eu/en/afripi/activities/international-seminar-anti-counterfeiting-and-intellectual-property-and-their>

⁸ <https://internationalipcooperation.eu/en/afripi/activities/communications-training-aripo-regional-intellectual-property-rights-system>

⁹ <http://www.liberianobserver.com/liberia-aripo-bemoans-low-ratification-ip-protocols>

- IP applications in ARIPO have increased by 26% over the past year.
- There has been low ratification and domestication of some of the ARIPO protocols - the Banjul Protocol (trademarks), the Swakopmund Protocol (traditional knowledge), and the Arusha Protocol (plant varieties) – and this is concerning. ARIPO has, however, received assurances from Ghana and Tanzania that they will ratify the Arusha Protocol.
- There are draft Regulations for the Implementation of the newly adopted Kampala Protocol on Voluntary Registration of Copyright and Related Rights.
- The European Patent Office (EPO)'s initiative - the Regional Patent Examination Training Programme (ARPET) - is set to develop the capacity of ARIPO members to examine and grant world-class patents.

OAPI: Soon a fund to better finance invention and innovation¹⁰

A delegation from the African Intellectual Property Organization (OAPI), represented by its Director General, Mr. Denis Bohoussou, paid a working visit to the African Guarantee Fund (AGF) in Nairobi, Kenya, from 6-9 November 2022.

AGF is OAPI's partner in a venture that involves setting up a mechanism for financing invention and innovation. When the venture is up and running OAPI will apparently be operating as a '*development agency*'. The issue will be further addressed by the OAPI Board of Directors in Cameroon, 8 December 2022.

OAPI: POV, an added value for breeders and producers.¹¹

In a recent LinkedIn posting OAPI has highlighted the issue of counterfeiting in the context of plant varieties. The posting warns that the economic consequences of such counterfeiting can be significant.

In the posting there is reference to an earlier OAPI posting of 9 November 2022, where the benefits of protecting plant varieties are set out. In that document the following points are made:

- Breeding programs aimed at obtaining high-performance varieties are long and costly.
- Without legal protection these new varieties can be exploited by third parties.
- Hence the need for legal protection, through registrations that can be enforced by the courts in any OAPI member country.

Botswana: National Intellectual Property Policy¹²

ARIPO's Director General Bemanye Twebaze has congratulated Botswana for launching its National Intellectual Property Policy on 15 November 2022. He said that the publication of an IP policy document showed that Botswana '*understood and appreciates that IP primarily aims to enhance lives through solutions to challenges of food security, public health, and clean water, amongst many other foundational elements of a strong economy. Integrating IP into national policies and strategies will tremendously benefit Botswana's socio-economic development.*'

¹⁰ <http://oapi.int/index.php/fr/component/k2/item/746-oapi-bient%C3%B4t-un-fonds-pour-mieux-financer-l%E2%80%99innovation>

¹¹ https://www.linkedin.com/posts/oapi-linkedin_obtentionvaezgaeztaile-activity-6996127636024418304-gfvS?utm_source=share&utm_medium=member_desktop

¹² https://www.linkedin.com/posts/african-regional-intellectual-property-organization_intellectualproperty-activity-6998314141962670080-YepN/?utm_source=share&utm_medium=member_ios

Ghana: CSIR launches intellectual property policy¹³

In Ghana the Council for Scientific and Industrial Research (CSIR) has launched an intellectual property policy document, a document that was drafted with the assistance of the World Intellectual Property Organisation (WIPO). The document was drafted for the benefit of both innovators and the CSIR.

Namibia: Namibia's new copyright law to offer more protection...as draft bill addresses gaps in existing IP legislation¹⁴

A wide-ranging news article about IP appeared in the Namibian newspaper, New Era. It dealt with general issues, such as:

- The direct correlation between strong IP rights and economic development.
- The considerable understanding in Namibia about the importance of trademarks, including the fact that Africa is the world's fastest-growing market for counterfeit goods.
- The fact that Namibia is a signatory to many IP treaties, as well as a member of ARIPO.

The article also dealt with the fact that Namibia's Business and Intellectual Property Authority (BIPA), in collaboration with the trade and industrialization ministry, is currently reviewing and amending Namibia's Copyright and Neighbouring Rights Protection Act (1994). The thinking is that copyright law must be more responsive to the needs of the creative industry and offer more protection. A draft law has been published.

Nigeria: INTA and other international IP bodies facilitate training for trade mark examiners in Nigeria¹⁵

Busola Bakinso, the Co-Chair of the Global Advisory Council Africa of the International Trademark Association (INTA), represented the body at a session at the Trademark Examiners' Training that was held at the United Nations House in Abuja, Nigeria. Other bodies represented were the World Intellectual Property Organisation (WIPO), the United States Patent and Trademark Office (USPTO), as well as certain national IP offices.

South Africa: Commissioner of Patents sets out the requirements for a patent infringement claim¹⁶

The court of the Commissioner of Patents has, in a recent infringement case, provided a useful summary of the court judgments that set out what needs to be established in a patent infringement case in South Africa. The citation is *Hans Sasserath GMBH & CO. KG and Halograph (Pty) Ltd v Advanced Valves CC ZACCP 2(5 September 2022)*, and it can be accessed at:

South Africa: Tool to prevent businesses ideas from being stolen¹⁷

Many small businesses do not protect their IP. As a result, an organisation called The Innovation Hub has approached WIPO for assistance. This assistance has taken the form of a self-assessment tool that enables

¹³ <https://www.businessghana.com/site/news/business/274356/CSIR-launches-intellectual-property-policy>

¹⁴ <https://neweralive.na/posts/namibias-new-copyright-law-to-offer-more-protection>

¹⁵ https://www.linkedin.com/posts/busola-bakinson-commercial-ip-specialist_ipspecialist-iplaw-oalp-activity-6988843866309210112-J5wz/?utm_source=share&utm_medium=member_ios

¹⁶ <http://www.saflii.org/za/cases/ZACCP/2022/2.html>

¹⁷ <https://www.iol.co.za/business-report/entrepreneurs/tool-to-prevent-business-ideas-from-being-stolen-a5f14123-fec0-4416-ad03-10515346e4d0>

business owners to identify IP in their businesses and understand how to manage this IP. This tool will only be available to organisations and businesses that are affiliated with The Innovation Hub.

South Africa: Copyright bill, fair use is an alien system with no roots in our law and does not belong in it¹⁸

A news article deals with the fact that South Africa is, through new copyright legislation, in the process of introducing fair-use provisions (provisions that provide exceptions to the exclusive right of the copyright owner), and thereby replacing the existing fair-dealing provisions. The author, Owen Dean, a professor of copyright law, is strongly opposed to this development.

Dean makes the point that fair-dealing has served South Africa (and indeed most of the world) well for many years, and that it has the benefit of creating a degree of certainty. Fair use, on the other hand, is only used in six countries (including the USA) and entails very little certainty because judges can create new exceptions in court cases.

The new legislation - complete with the fair-use provisions - has been passed by the South Africa legislature's lower house, but it still needs to be passed by the upper house.

2. Additional topics

Africa:

Regional Conference for OAPI MS on the Status of the Protection and Use of African Medicinal Inventions
<https://internationalipcooperation.eu/en/afripi/activities/regional-conference-oapi-ms-status-protection-and-use-african-medicinal>

Africa:

Media houses asked to escalate awareness on intellectual property rights
<https://www.newvision.co.ug/category/news/media-houses-asked-to-escalate-awareness-on-i-147167/media-houses-asked-to-escalate-awareness-on-i-147167>

Africa:

Africa needs bold actions to tap youth potential for industrialization – ONE Campaign
<https://businessday.ng/news/article/africa-needs-bold-actions-to-tap-youth-potential-for-industrialization-one-campaign/>

OAPI:

Circular note dated 27 October 2022
http://www.oapi.int/Ressources/notes_circulaires/2022/01112022/note_circulaire.jpg

OAPI:

OAPI-AFRIPI The Regional Conference on the Protection and Use of African Medicinal Inventions in OAPI Member States.
<http://www.oapi.int/index.php/fr/component/k2/item/745-oapi-afripi-la-conf%C3%A9rence-r%C3%A9gionale-sur-la-protection-et-l%E2%80%99utilisation-des-inventions-m%C3%A9dicinales-africaines-dans-les-etats-membres-de-l%E2%80%99oapi>

South Africa:

Hendler and Hart (Pty) Limited v BV Cookware (Pty) Ltd (4735/2021) [2022] ZAFSHC 279 (17 October 2022)
<https://www.saflii.org/za/cases/ZAFSHC/2022/279.html>

¹⁸ <https://www.dailymaverick.co.za/article/2022-11-08-copyright-bill-fair-use-is-an-alien-system-with-no-roots-in-our-law-and-does-not-belong-in-it/>

South Africa:

Golden Fried Chicken (Pty) Ltd v Vlachos and Another (497/2021) [2022] ZASCA 150 (3 November 2022)
<http://www.saflii.org/za/cases/ZASCA/2022/150.html>

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