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ACCORDING TO INTELLECTUAL PROPERTY: A PRO-DEVELOPMENT VISION OF THE LAW AND THE NIGERIAN INTELLECTUAL PROPERTY LAW AND POLICY REFORM IN THE KNOWLEDGE ERA

By

Adebambo Adewopo

NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES

ACCORDING TO INTELLECTUAL PROPERTY: A PRO-DEVELOPMENT VISION OF THE LAW AND THE NIGERIAN INTELLECTUAL PROPERTY LAW AND POLICY REFORM IN THE KNOWLEDGE ERA

5th Inaugural Lecture

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By

Professor Adebambo Adewopo
Ademola Edu Distinguished Professor of
Intellectual Property Law

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Foreword

The aim of Intellectual Property (IP) Law is to protect the application of ideas and information that are of commercial value. We are in the digital age where IP is more susceptible to infringement thus advancements in computing, biotechnology and computing require IP protection. Society is in eternal flux, and laws should abide by the same to meet up with local, regional and international developments. Where laws are impracticable and do not meet up with societal changes, law reform becomes imperative. Law reform does not involve only reforms in the substantive areas of law; it also involves enhancing the quality of the bodies or institutions that enact, administer and enforce laws.

Prof Adebambo Adewopo notes the gradual developmental drift of IP laws from the territorial to the international and then the global. He observes that these three phases have established IP as a central knowledge system of the global era. His lecture traces the development of IP laws internationally and locally. In the local scene, he highlights the development from the pre-independence Trademark, Patents and Copyright laws to the post independence legal regime on IP. The Berne and the Paris Conventions of 1886 and 1883 respectively laid the foundations for the International Protection of IPRs. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) represents the global era of IP protection. The TRIPs which is one of the set of agreements making up the integrated WTO system of trade rules brings about a concept of IPR balance and in the lecturers words 'for the first time represents a new global epoch signified by a reinforced minimum standard for the protection and enforcement of IPRs…'

The four basic proposals by Professor Adewopo for reconfiguring IP law reform in Nigeria are apt in the light of the developmental imperatives in Nigeria. **I join** Professor Adewopo in the call for reform of IP law and policy in Nigeria. His reform agenda includes the expansion of the subject matter

of IPRs and the standards of protection. It also includes entrenching a mechanism for regular review of existing laws to embrace societal changes in the light of developmental imperatives in Nigeria and the harmonisation of the IPR administration in Nigeria.

This lecture showcases his career experience spanning over twenty years of teaching, practising and enforcing Intellectual Property Rights (IPRs). He shares his achievements in research and engagement as an IP administrator which reflects in the theme of his lecture bordering on the reform of the Intellectual Property (IP) System in Nigeria in the knowledge era. His Lecture would appeal to any logical mind; providing a background, an in-depth treatise and a proposed pathway through reform of IP law in Nigeria. It leaves us, still enthralled by his depth of knowledge, with a general food for thought.

Professor Epiphany Azinge, *SAN, Ph.D., LLD*
Director General
October, 2012

Protocol

On this August occasion, my *primus deference* goes to Mr Director-General, Nigerian Institute of Advanced Legal Studies, distinguished Professor Epiphany Azinge, *SAN, Ph. D, LL.D.*

I also acknowledge reverently the presence of the exceedingly luminary faculty of this great Institute and its Management.

I am most humbled by the esteemed presence of the cream of eminent academics, Senior Advocates, political and industry leaders, my lords, temporal and spiritual, accomplished lawyers, friends and colleagues from all works of life.

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Introduction

Distinguished ladies and gentlemen, this evening presents an auspicious occasion to reflect on the significance of intellectual property (IP), a discipline which has in all modesty defined almost all my professional and academic career. In the last 20 years of my foray in this field, I have had the unique privilege of teaching, practising as well as administering and enforcing intellectual property rights in both private and public domains and in those years witnessed both the theoretical and the practical realities of the law which have further illuminated my worldview of this beautiful field of law. Indeed, 'IP' as it is often referred to, has never ceased to interest me from the very first day of my opening the pages of my first IP book, that engaging IP bible aptly entitled 'INTELLECTUAL PROPERTY' written by the famous English IP scholar, Professor W. R Cornish, one of the world's leading authorities, which took place interestingly in the library of this great Institute. That encounter was a product of a fortuitous academic adventure actuated by an executive fiat in my very early days in the faculty of law, Lagos State University where I had the privilege of pioneering the teaching and research in this field. Since then I have become an undiminished scholar in the field more than any other area of the law and my engagement has continued to grow with the rapidly developing relevance and influence of IP in today's information Age. From a vantage position, I have equally witnessed the growing transformation of this field of law from that of relative obscurity into public consciousness where students, commentators and almost everyone including a hawker on the street can talk about the 'evil' in a counterfeit *panadol* or *polo* bag or a pirated CD, book or computer software.

This lecture, therefore, constructs my strategic thoughts on intellectual property particularly in Nigeria and in the context of contemporary developments. Indeed, in almost five centuries of its history, it is striking to note how so much has occurred to its principles and precepts, without having yet come to a full

circle.[1] Intellectual property has never been more economically and politically important and controversial than it is today such that it is no longer an obscure or arcane subject of the 18th century which the first intellectual property statute, the 1709 Statute of Anne and English oldest copyright statute, met on the wake of the printing technological breakthrough. Indeed, the Statute of Anne was the first enactment ever to spell out the basic components that were to form the common structure of future copyright laws; that is, providing for (1) exclusive rights to (2) authors, with respect to (3) a subject matter and (4) for limited time, all of which cumulatively form the backbone of any copyright legislation all over the world.[2] The invention of the term 'Intellectual Property' did not foresee its destiny from the currents of historical evolution to the present information and communication revolution. Indeed, the rise of IP through many remarkable developments, principally at the hands of technology and commerce and then the mixture of both is now ironically contesting its future demise in the grip of the very developments that brought about its rise. IP has evidently grown in leaps and bounds, attaching itself inexorably to other disciplines and the wider issues of human development beyond the vision of its original protagonists. That is the context of my anchor phrase – "According to IP" which is therefore to reflect upon the very notion of IP in its doctrine, significance and limitations. A complexity and diversity of developments have shaped the IP system in all the stages of its evolution.[3] The three phases, starting from territorial, international and the global,

1. Army Kapczynski [2008]: The Access to Knowledge Mobilisation and the New Politics of Intellectual Property, Yale Law Journal 117, 804.
2. See Victor Nabhan, opening Speech in GLOBAL COPYRIGHT. THREE HUNDRED YEARS SINCE THE STATUTE OF ANNE, FROM 1709 TO CYBERSPACE, Lionel Bentley, Umar Suthersanen & Paul Torremans (Ed.) 2010, E-Elgar Publishing, 2.
3. See Peter Drahos [1997]: Thinking Strategically about Intellectual Property Rights, Telecommunications Policy, Vol. 21, No 3, 201-211 Drahos identifies three stages in the evolution of IP, namely territorial, international and global stages.

have established IP today as a dominant knowledge system of the global era. By the turn of the new millennium, IP has grown in substance and stature linking many disciplines and defining the underlying implications of the knowledge driven global economy.[4] As I have recently articulated, that its reach in today's world has become "so diverse and dynamic that [it] sits actively in the interstices of the disciplines of law, technology, economics, health, culture, agriculture, environment, international relations, politics and more. The inter-disciplinary breath invites scholars, practitioners, policy makers and the industry across the world to thought-provoking debate of jurisprudence, policy and best practices in the ensuing systems of IP".[5] The present global stage is now faced with the challenges which seek to test the validity of intellectual property as the pre-eminent knowledge system in which to erect a just and sustainable new global economic order by which all the nations of the world, particularly the developing countries, can achieve the demands of development. The increasing focus on IP and developing countries has become a major feature in international IP law and policy. It also demonstrates the importance of this category of countries in the global balance of IP policy. Developing countries constitute more than 2/3rd of the world and more than half of the global population. Today, they are in the majority in the World Intellectual Property Organisation (WIPO) and World Trade Organisation (WTO) and other international organisations. Prominent developing countries constitute substantially the core of the emerging economies now led by the new BRIC group of countries.[6] By

4. Development in the Information Age, Issues in the Regulation of IPR Computer Software and Electronic Commerce, UNCTAD Project on IPRs and Sustainable Development, Issue Paper No. 9, 2004, v Part I.
5. See Editorial, NJIP, Maiden Edition, V.
6. BRIC stands for the rapidly growing economies or economies in transition group of countries consisting of Brazil, Russia, India and China (with South Africa joining to make it BRICS). See Dominic Wilson & Roopa Puruahotthamma, Dreaming with BRIC: The Path to 2050 at 3

some account, an estimated 75% of the world's bio-diversity is located in the global south.[7] Africa, for instance, holds 54% of the world's gold, 40% of its diamond, 75% of its platinum and now over 15% of world population.

The theme of my lecture is on the subject of the reform of the IP system in Nigeria as part of the development imperative which has become one of the most topical issues in IP in its interaction with the wider socio-economic issues of today. The incumbent call on academics is not only to articulate critical questions of jurisprudence from the prism of doctrine or theory but also from contemporary socio-economic realities and multidisciplinary context that this topic eloquently demands. IP reform is not so much of a topic than the totality of IP law and policy itself because it deals with the entire scope of IP in the context of underlining policy considerations. IP reform for development implicates two important dimensions which are explored in this lecture for the purposes of IP law and policy in Nigeria. First is in the local context of the prevailing socio-economic conditions and realities that should reflect in the current and future direction of the law. Second is the global context with the impact of the attendant digital revolution that should reflect in the formulation of IP reform of the 21st century. There is no doubt that we are in a globalised world that is intensely knowledge-driven in which Nigeria as a developing country can favourably compete given an appropriate and well informed and reformed IP law and policy that would advance human development. The lecture, therefore, explores the pro-development vision as the cardinal objective that should form the rationale and substance of the future directions of IP law in Nigeria. In terms of framework, this lecture is divided into four main parts: Part I lays the foundations of IP in its theoretical and

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(Goldmansachs, Global Economics Paper No 99, 2003 available at *http://www.goldmansachs/ideas/brics/book/99-dreaming.p.4*

7. Oguamanam, C. International Law and Indigenous Knowledge; Intellectual Property, Plant Biodiversity and Traditional Medicine, Toronto Univ. of Toronto Press, 23, 39, 50.

contextual justifications as a backdrop to the discussion in Part II, which deals with the development of IP law in Nigeria. That development underscores the centenary of IP law in Nigeria from its introduction at the turn of the 21st century as part of the imperial legal administration. Part III shifts to the international IP governance system to construct and situate the dynamics of the current global IP law, particularly in the context of the development imperatives that are rapidly defining not only the global IP regimes but the national IP law and policy across both the developed and developing world which the Nigerian IP law must recognise and actively participate in. This leads to the discussion in Part IV of the future direction in the reform of the Nigerian IP law and policy for the administration and protection of Nigeria's fledgling knowledge economy. It is in this context that I address the development of Nigeria's IP law and the path, which in my view, it ought to take in order to assist in achieving the country's development objectives.

THE FOUNDATIONS OF INTELLECTUAL PROPERTY

IP has reportedly been grounded and validated overtime by natural, social, moral and economic narratives. The philosophical, legal and economic rhetoric for protecting the creations and innovations of authors, inventors and producers, dating back to Roman times has employed terms as 'incentive', 'reward', 'natural rights', 'public interest', 'utilitarian', 'welfare' and more recently 'stakeholder'. Consequently, theories have been constructed around those terminologies[8] as jurisprudential foundations of modern intellectual property rights. The Kant or the Hegelian natural right, ethical or human right justification for the protection of authorial personality and the Lockean concept of property have formed the cornerstones

8. See Graham Dutfield & Uma Suthersanen: GLOBAL INTELLECTUAL PROPERTY LAW, EE, 2008, 47, 48)

of modern IP rights systems.[9] The doctrinaire of these systems has proved to be largely relevant and influential to the philosophical basis of the German, French, English and the American IP laws during the 18th and 19th centuries. For example, the Hegelian deontological notion of the author's right has come to define the juridical basis of the German and French copyright laws. The Lockean concept of property formed the basis of the pre-modern IP privileges in Venice and England as well as the modern statutory rights based on the United States' Constitution which conferred patent and copyright on authors and inventors to 'promote the progress of science and arts'. The modern IP law which eventually emerged as a distinct area of law towards the middle of the 19th century captured the principle of reward – incentive for the 'creative labour of the mind' as the cornerstone of protection in all IP laws.[10] The expression, intellectual property is therefore taken to mean the legal rights which may be asserted in respect of the product of the human intellect.[11] That the sum of a man is his intellect, which he holds as his birthright, that he is worthy of the product of his labour as a reward and incentive to further create and innovate for the benefit of the society.

The idea in Anglo-American philosophy of IP is to reward creativity and innovation and balance that with the public interest in granting access to creative works. Macaulay's 1841 speech in the English House of Commons underscored the integrity of what is known as copyright today.

> "The principle of copyright is this: It is a tax on readers for the purpose of giving a bounty to writers. The tax is an exceedingly bad one;

9. See Robert P. Merges & Jane C. Ginsburg: FOUNDATIONS OF INTELLECTUAL PROPERTY, 2004, Foundation Press 1.
10. See Brad Sharman & Lionel Bentley, THE MAKING OF MODERN IP LAW, Cambridge Studies in IPR, Cambridge Univ. Press, 1999, 9.
11. See Jeremy Philip & Alison Firth: INTRODUCTION TO INTELLECTUAL PROPERTY LAW, Butterworths, 2001, 4.

> it is a tax on one of the most innocent and most salutary of human pleasures but it is desirable that we should have a supply of good books; we cannot have such a supply unless men of letters are literally remunerated and the least objectionable way of remunerating them is by means of copyright".[12]

In the United States, Thomas Jefferson's historic letter to Isaac Macpherson also expressed similar IP sentiment. According to Jefferson,

> "That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man and improvement of his condition seems to have been peculiarly and benevolently designed by nature. [W]hen she made them like fire expansible over all space, without lessening their density in any point, and like the air in which we breathe, move and have our physical being, incapable of confinement or exclusive appropriation. Invention then cannot give an exclusive right to the profit arising from them as an encouragement to men to pursue ideas which may produce utility but this may not be done according to the will and convenience of society…"[13]

12. Macaulay, Copyright Trevelyan ed. 195, 197, 1879. quoted in Zechariah Chafee, Reflections On Copyright Law, 45 COLUMBIA LAW REV. 503, 507 (1945).
13. Reproduced in F.D. Prager: A History of Intellectual Property from 1545 to 1787, 26 J. PATENT OFFICE Soc. 711, 759, 760 [1994].

From the classical theories, the idea of creativity, its preservation and protection can be seen as a necessary part of the values of the society. Therefore, IP law, like other laws, "is more than just another opinion, not because the values it does embody tend from time to time to reflect those of a majority or plurality but because it is the value of values. Law is the principle institution through which a society can assert its values".[14] The differences in the forms and treatment of creativity between the indigenous societies and industrialised societies explain the differences in the legal method of protection but that does not translate to the dearth of creative genus to protect in the indigenous societies that now constitute the developing countries which are today at the receiving end and are still battling with the burden of the imposition of western globalised intellectual property rights (IPRs) system.

The western IP system that was subsequently introduced as part of the received English laws and the legal systems in both common and civil law colonies is completely at variance with the epistemological foundations of the knowledge systems, norms and values in many indigenous societies because the indigenous knowledge does not fit the criteria for IPR protection under the western IP system.[15] The international IP law that eventually grew out of the western IP episteme, particularly with the birth of Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1995, further exacerbated the doctrinal tension that has informed the development imperatives of the global IPR regime. TRIPS, in promoting a new IPR standard for global consumption, sought to globalise culture, culture being the unique identity and heritage of every society, including its knowledge system, which brought about a new global tension in IPR, culturally

14. Alexander M. Bickel, The Morality of Consent 5 (1975) cited in Ruth L. Gana: Has Creativity Died in the Third World, Some Implications of the Internationalisation of Intellectual Property 24 Denv. J. Int'l L & Pol'cy 109, 112.
15. *Ibid.*

speaking. It is that tension that is today plaguing TRIPS in the realisation of its promise of development and in which attempts are being made to recalibrate its rules against increased awareness and articulation of the developing countries' interest in the global dynamics of IPR protection. The cultural value of IPR protection of creativity is today defined in terms of the realities and conditions of the environment from where the creative activities emanate or thrive. That is the premise on which the development imperative of IPR is anchored in current literature and studies.

From the first IP statute in 1709, IP has always responded to engaging issues of the moment: The early industrial revolution coupled with the technological revolution and the birth of globalisation of the last century in all its manifestations, attest to the resilience of IP doctrine. Consequent upon those revolutions, the resultant versatility of IP in its generic characterisation became personified in its distinct categorisations as copyright, trademark, domain name, patent, design, geographical indications (GI) and other IP related rights of contemporary times. IP, therefore, is the umbrella term that describes the creations of the mind like inventions, literary and artistic works, symbols, names and images often used in commerce.[16] For instance, copyright contemplates the moral essence of creativity, the very soul of authorship that transcends the pursuit of economic ownership. That is why the twin doctrinal values of moral and economic rights occupy till date the entire space, including the cyberspace of copyright jurisprudence. Patents on the other hand represent the best arsenal of monopoly fashioned by early thinkers to shield inventors from exploiters and competitors. By the end of the 19th century, three important countries, England, France and the United States had already established statutory patent systems.[17]

16. See "What is Intellectual Property?" WIPO Publication No. 450(E).2.
17. France in 1791, US in 1793. Austria 1810, Russia 1812, Spain 1820, Portugal 1837, Sweden 1834, Netherlands 1817, The Vatican State 1833.

Trademark law, a late entrant into the IP triumvirate, was conceptualised to entrench the legal sanctity and integrity of free commerce as one of the handmaids of industrial revolution and modern capitalism across Europe and America. It protected the use of marks as an iconic symbol in the market place and thereby completes the mechanism conceived in Anglo-Saxon law for the protection of ideas and its expression in the dominant manifestations of copyright, patent and trademark laws. In a nutshell, the trading symbolism of trademark, the functional utility of patent and the creative craftsmanship of copyright, all define the value and the power of intellectual property as we know it today.

Having evolved from the simple object of protection such as books or poems and other works of art, trade or science and extends to a wider creative and technological innovations of today, IP has inexorably assumed a more complex architecture due largely to the rapidly changing world of commercial, industrial and technological developments. These creations have now become subjects of statutory protection by virtue of which their creators are conferred with some rights in the nature of proprietary interest. Such right allow the creator to control the use and exploitation of the creation by any other person under the two broad categories of intellectual property, namely, industrial property and copyright. Industrial property includes patent for inventions, trademarks for trading names and symbols, industrial designs and geographical indications. Classical copyright includes literary works such as novels, poems and plays, musical works, artistic works such as drawings, paintings, photographs and sculptures and architectural designs. In most jurisdictions, copyright covers cinematographic films and broadcasts. However, related rights often referred to as neighbouring rights include rights of performers in their performances, producers of phonograms and

broadcasters[18]. Newer forms of protection cover cultural expressions of folklore and the finer forms of traditional knowledge that now form the basis of the emerging corpus of intellectual property regime.

Much assuredly, IP categories have continued to expand exponentially to cover newer grounds, a whole body of knowledge further cements IP as the most powerful knowledge system ever conceived by man although in much contestation today over its admittance of other knowledge systems.

As an intangible proprietary right, it is exclusive, known as the right to restrain others from interfering with it and was promptly embraced as the much needed monopoly to accompany the dawn of capitalism that reportedly aided the early rise of western economies long before the global debate on the knowledge economy started. IP has now been accepted almost canonically as a term of art to describe related but separated norms or rules that regulate the allocation of rights over knowledge or the corpus of human creations. It precedes the industrial and the post-industrial economy and certainly has blossomed into the new information society. IP captures wide ranging subjects of human creations in diverse fields or endeavours over which rights of property have been created whether it is Chimamanda's book or Wole Soyinka's poem, *Jewel by Lisa*'s designer label, or NIALS' database of publications, the chemical formulae for new malaria drug or the BAGCO 'super sack' trademark; the scope of creative and innovative enterprise has expanded inexorably and in a pace and pattern that has continued to test the significance of IP jurisprudence in contemporary affairs.

THE DEVELOPMENT OF INTELLECTUAL PROPERTY LAW IN NIGERIA:

18. In the context of the Nigerian Copyright Act, both sound recordings and broadcast are protected as copyright. See Section 1(1) of the Copyright Act.

THE CENTENARY STORY SO FAR

The historiographic inquiry into IP in Nigeria reveals two perspectives of history in the subsistence of creative expressions that form the basis and the principles of modern IP law. The first approach is the pre-colonial or the indigenous history and the second is the classical IP incorporated by colonial law and subsequently maintained by post-independence IP statutes. It is in the latter that IP law is at the centenary of its introduction in Nigeria. It can be convincingly asserted that across the length and breadth of the country and in the various cultures and traditional practices, cultural expressions and traditional practices expressed in folk songs, sculptures and paintings, designs, marks, woven cloths and textiles, excavations, traditional medical and herbal methods and other innovative practices, which could have qualified for modern IP protection, recognised and protected under customary practices and beliefs, existed.[19]

In reference to the second perspective of the introduction of the received English law which marked the commencement of IP law in the classical sense, the recognition of creative expressions which were existent in pre-colonial oral and written history has engendered a notorious epistemic skirmish in IP jurisprudence. The introduction of IP law in the classical sense took the usual common form in the colonial legal development in Africa, Asia and Latin America.[20] It appears that one of the earliest intellectual property statutes applicable to Nigeria was in trademarks.[21] It is exactly a hundred years ago this year that Osbourne CJ in the 1912 *Houtman's case* gave a judicial

19. See Bankole Shodipo: PIRACY & COUNTERFEITING, GATT, TRIPS AND DEVELOPING COUNTRIES, 1997, Kluwer Law, 37 – 49, See also Adebambo Adewopo, NIGERIAN COPYRIGHT SYSTEM, PRINCIPLES & PERSPECTIVES, Odade Publishing, 2012, 4-5.
20. See F. Shyllon, INTELLECTUAL PROPERTY LAW IN NIGERIA, IIC Studies in Industrial Property & Copyright law Vol. 21, Max Plank Institute for IP, Competition & Tax law, Munich, 2003, 27.
21. Unreported but referred to in *W.B. Maclver & Co Ltd .v. Champaign Francaisse de L'Afrique Occidentable* (1914 -1922) 3 NLR 18, 19,

articulation of the function and importance of trademarks in the early commercial life of colonial Nigeria. He recognised trademarks as "protecting not only a vast illiterate population little acquainted with pictorial representation, but also the pioneers of trade who have earned a reputation among these illiterate folk by the quality of goods associated with such recognised mark such as a particular bird, animal, tree or other object". That judicial pronouncement was in respect of the Trademark Proclamation of 1900 to underline the nascent importance of trademark among other forms of IP in the early commercial environment in the country.

The Trademark Proclamation of 1900 was the instrument by which the United Kingdom Trademark Act was made applicable to the then Southern Nigerian Protectorate. Subsequently, the 1914 Amalgamation of the Southern and Northern Protectorates by the 1914 Ordinance extended the Trademark Proclamation to the whole country. This was replaced by the Trademark Ordinance No. 13 of 1926 applicable by a 1914 Ordinance to the whole of Nigeria with the aim of facilitating trade by British imperial power. The 1926 Ordinance was not repealed until 1965, five years after independence by the Trademark Act of 1965[22] which is also the first post-independence intellectual property law, thereby making Trademark law not only the first IP law in Nigeria but also the first post-independence IP law. It was not until about five years later that both the Patent and the then Copyright Acts came into force. Since then, the trademark situation has remained so for over four decades without any amendment or enactment of a new Act despite the rapid changes in trading and consumer practices as well as the local commercial conditions in which trademarks are usually deployed or used.

Patent law developed along a different path. Patent Proclamation Ordinance of 1900 and 1902 were respectively applicable to the colony of Lagos and the Southern Nigeria, and

15. The law came into effect on the 1st June 1967.

the Northern Protectorate. Those Ordinances were repealed by the Patent Ordinance of 1916 applicable to Nigeria following the earlier 1914 amalgamation. The 1916 Ordinance was repealed by the Registration of UK Patent Ordinance of 1925. That Ordinance established a dependent patent regime by which patents granted in the UK were merely registered in Nigeria which meant that the registration only conferred rights and privileges in Nigeria to the extent to which it was granted by the UK law with an extension to Nigeria. The Act was only repealed by the Patent & Design Act of 1970, ten years after independence and by which that dependent patent regime had operated for about 70 years. The 1970 Patent Act itself has been in operation now for 42 years. This is significant in the overall development of IP law in Nigeria in the centenary of its subsistence, particularly in respect of an important feature of the Patent Act that has no substantive examination system by which inventions are examined and granted. That points to a continuation somewhat of the previous dependent patent system of a 100 years ago except that patents are now granted in Nigeria, no longer in the United Kingdom for extension to Nigeria. It is regrettable that in almost half a century of the Nigerian Patent Act, it is a debatable question whether there is indeed a functional patent system operative in Nigeria. That Patent Act is still the applicable patent law since 1970 without amendment or repeal to give place to a new patent regime which is urgently needed to support the current drive towards achieving sustainable economic and technological development.

The copyright momentum evolved on a slightly different note. With the extension of the English Copyright Act of 1911 by an Order in Council of 24th June 1912, the colonial date more particularly marked the century of copyright law in Nigeria which remained in force with the amalgamation of the Northern

and Southern Protectorates in the new country in 1914.[23] The first phase of copyright law in Nigeria lasted from 1912 till 1970, ten years after independence, totalling a period of 58 years. Before the 1911 Act was repealed by the Copyright Act 1970 – which improved on the earlier Act in terms of the nature and scope of copyright[24] – there were decades of relative obscurity of developments in copyright matters until the impact of the oil boom of the '70s which fed the copyright-based industries, particularly the entertainment and publishing sectors with the quest for enhanced administration and protection. This could be gleaned from the fact that the era of English Copyright Act 1911[25], which was the first copyright statute, continued almost seven decades until the first post-independence Copyright Act of 1970 was enacted. The 1970 Act subsisted for almost two decades before the pressure for reform by the local copyright industry, particularly the publishing and music industries, which arose out of the huge losses recorded as a result of piracy while the signs of the downturn in the economy had begun to reflect negatively in the fortunes of the industries that had experienced a boom in the 1970s. The pressure for an updated copyright law to protect the rapidly evolving copyright in protected creations led to the repeal of that Act and the enactment of the Copyright Act of 1988[26] That Act has been amended twice in 1992 and 1999, making a significant record of posting more revision than any IPR law in Nigeria. The 1988 Act has been generally regarded as a comprehensive and author-

23. See Adebambo Adewopo: Nigerian Copyright System, Principles and Perspectives, *supra* 4-5; See also John Asein: *Nigerian Copyright Law & Practice*, 2003, NCC –WIPO, 27-29.
24. See s.44. The Act provided for six categories of copyright works which have been maintained under the present 1988 Act. Common law copyright was abrogated by providing that no copyright shall subsist otherwise than by virtue of the Act. *Donaldson v. Beckett* 1 Eng. Rep.837 (H.L 1774).
25. Applied by the Order-in-Council No. 912 of 1912.
26. Laws of FRN C28, 2004.

friendly legislation.[27] With this development, the framework of intellectual property law in the country is set in the structure and subsistence of the three extant legislations, namely, the Trademark Act 1965, the Patent and Design Act 1970, and Copyright Act 1988 (as amended), all of which respectively govern the three broad divisions of intellectual property in Nigeria.

NIGERIAN INTELLECTUAL PROPERTY GOVERNANCE

From the standpoint of legal history, the present structure and function of IP laws in Nigeria have progressively revealed a crisis of jurisprudence and policy development that falls short of the recognition and protection of the enormous human resources that constitute the creative base of the nascent local knowledge economy whether in the field of copyright, trademark, patent and designs or other related IP rights. There are some reasons that can be advanced for this apparent failure. First, the sheer age of the IP laws reflects an astonishing legal anachronism, particularly in the area of industrial property. The Trademark Act is 47 years old while the Patent and Design Act is 42 years old. Only the Copyright Act of 1988 has been amended twice. Second, the nature and scope of IPR protection ought now to reflect an appropriate standard which is compatible with contemporary developments in the relevant field or genre for protection. Copyright, for instance, in the current digital economy requires a careful balance between restriction and access to copyright works that the new information technological capacity can achieve. Trademark owners have continued to experience inexplicable loss in the commercial value of their trademark as a result of the manifest lacunas in the protection of shape and packaging of goods, service marks and collective marks that can be used as viable trading devices. Third, the general pace and pattern of law enforcement,

27. See the Copyright Amendment Act 1992 and Copyright Amendment Act 1999.

administration of justice and law reform in Nigeria reflect a systematic failure in policy formulation and attendant capacity deficit which has implicated a largely deficient IP law. Fourth, the inability to link IP with the domestic economic, technological and cultural environment has weakened its functional utility in fulfilling its acclaimed role of contributing to economic development.

Scholars have come to the full realisation that IP is only a utopian phenomenon when it is stripped of its environmental or developmental context and that IP law can only optimally function in the economic and cultural conditions of its subsistence. That realisation that is now part of the current dynamics of global IP system is also significant to the development and reform of the Nigerian IP law, an important discussion to which I shall revert in the latter part of this lecture. That is why the current framework of IP laws contained in those three principal legislations requires urgent revision.[28] Essentially, the Copyright Act has maintained the basic tenets of copyright protection in terms of the subject matter, eligibility conditions, exclusive rights and duration of copyright genres which extend for the first time to neighbouring rights regime for live performances and expression of folklore.[29] One of the most salutary developments of the extant regime is the introduction of a public regulatory institution responsible for the administration and enforcement of copyright.[30]Although, the copyright space

28. Other relevant and IP-related legislations include NOTAP Act, Trade Malpractices Act, Merchandise Act and others.
29. See Part II of the Act.
30. See Part III of the Act under which NCC was established in 1989 and provides that NCC shall:
    (a) be responsible for all matters affecting copyright in Nigeria;
    (b) monitor and supervise Nigeria's position in relation to international conventions and advise Government thereon;
    (c) advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country;
    (d) enlighten and inform the public on matters relating to copyright;
    (e) maintain an effective data bank on authors and their works;

appears to have been dominated by the Nigerian Copyright Commission (NCC) particularly in the area of public regulation and enforcement of rights, the adequacy or otherwise of some of the provisions can be tested more by civil litigation than by criminal enforcement as IPR are essentially private rights. The different protected works under the Act are products of what has grown into potential industries or sectors in the Nigerian economy which will continue to depend on the strength of the copyright law for sustenance. The creative industry which is diverse in scope and structure is a case in point. The various sub-sectors cover the entertainment industries, which essentially comprise the music, movie and other creative media.[31] It covers activities wholly or partially engaged in the creation and distribution of copyright works, inclusive of those dependent on or supported by them.[32] The Nigerian entertainment industry is arguably the largest sub-Saharan creative economy. Nollywood, Nigeria's film industry, has recently caught the attention of scholars and policy makers, and in the description of a commentator is "arguably Africa's first mass pop culture phenomenon, enjoying widespread popularity and cultural influence across the continent".[33] Another commentary which describes the rise of Nollywood from an 'unlikely underdog' to

(f) be responsible for such other matters relating to copyright in Nigeria as the Minister may from time to time direct.

31. See Creative Economy Report 2008, The Challenge of Assessing the Creative Economy Towards Informed Policy-Making, UNDP-UNCTAD, 2008, 13. The Report cites the different models for the classification systems for the creative industries, namely, the UK DCMS, Symbolic texts, concentric circles and the WIPO Copyright Models. The commonly used WIPO Copyright Model broadly classifies the creative industries or the copyright based industries into three, namely, Core Copyright, Interdependent Copyright and Partial Copyright. Although, the Non-dedicated support industries are also classified. See National Studies on Assessing the Economic Contribution of Copyright-Based Industries, Creative Industries, Series No. 2, Report, WIPO.
32. *Ibid*, 11.
33. See Mark F. Schultz: "The Nigerian Film Industry and lessons regarding cultural diversity from the home – market effects model of international trade in films" in TRANSNATIONAL CULTURE IN THE INTERNET AGE, SEAN A. Pager and Adam Candeub (Eds) E-elgar, 2012, 231, 232.

an audio-visual power house, frames a case study of how "digital technologies have dramatically transformed the economics of audio-visual production in Nigeria" into a success story.[34] A significant part of the profitable investment in the future of the entertainment industry depends largely on an enforceable copyright and an effective IP management of the large company of rights both in the underlying works and the audio and audio-visual products of the industry.

The software, publishing, broadcast media, both television and radio and other media related activities, which are subjects of copyright protection, are dynamic sectors in the knowledge-based trade from which Nigeria can generate revenue, employment and investment. WIPO-commissioned studies on an evidence-based assessment of the contributions of the creative economy using economic indicators have shown significant performance of the creative economies in many countries under the studies. Those indicators in terms of employment generation, trade (both import and export), value-added services and GDP, for instance, with reference to Nigeria, are by far 'the most promising' in sub-Saharan Africa and

34. *Ibid*. See Sean A. Pager Digital Content Production in Nigeria & Brazil: A case for Cultural Optimism, 262, 267. See Chidi Oguamanam, Beyond Nollywood & Piracy: In Search of an Intellectual Property Policy for Nigeria, NJIP Maiden Edition, 2011, 3. For other commentaries and studies on Nollywood: See Ramon Lobato, Creative Industries and Informal Economies : Lessons from Nollywood, 13 (4) Int'l J. CULTURAL STUDIES 337, 339 (2010): STEVINA EVULEOCHA, Nollywood and the Home Video Revolution: Implications for Marketing Videofilm in Africa, 3 INT'L J. OF EMERGING MARKETS 407, 409 (2008): John MCcall: Nollywood Confidential: The Unlikely Rise of Nigerian Video Film, 13 TRANSITION 98, 109 (2004) : Brian Larkin, Degraded Images, Distorted Sounds: Nigerian Video and the Infrastructure of Piracy 16 PUB. CULTURE 289,314 (2004): Elizabeth March. The Nollywood Phenomenon, WIPO Magazine, June 2007; Olufumilayo B. Arewa, Youtube, UGC and Digital Music : Competing Business and Cultural Models in the Internet Age; 107 NW L. REV 431 (2009): Olufumilayo Arewa, The Rise of Nollywood Creators Entrepreneur and Pirates, Legal Studies Research Paper Series No. 2012-11 School of Law, University of California Irvine accessed *at http/ssrn.com/abstract+2011980*. (copy with author on file).

probably so among developing countries, although the Nigerian WIPO study is still in progress.[35]

The notion of knowledge economy is not restricted to the copyright protected enterprise or the creative economy. In recent legal and policy analysis of economic development, the respective roles of the industrial property regime have featured prominently in the context of the nature and scope of the protection they offer on the basis of distinctiveness and newness of trademark and inventions respectively.[36] Trademark, for example, are important instruments of commerce which perform the vital function of indicating the origin of goods and services, distinguishing, marketing, advertising or branding them as well as guaranteeing the quality of the products. Patent, on the other hand, has evolved as one of the oldest policies in promoting innovation and can be regarded as a catalyst for technological development. Nigeria's body of IP laws has generally reflected the basic tenets of IPR protection. The originality in copyright, the distinctiveness in trademark and the newness in patent demonstrate the raison d'être for the juridical protection of creativity and innovation in the three dominant categories of IPR under Nigerian law. The entire IPR schema in their respective structure, tenure and effective enforcement of their respective subject matter of protection is an affirmation of the importance and the prospects of the entire knowledge economy in which all the IPRs are engaged, both in the domestic and global marketplace. Trademark act, for instance makes extensive provisions for the effect of registration and non-registration,[37] the validity of registration,[38] the registration

35. See Adebambo Adewopo, Copyright and the Entertainment Industries in Nigeria: An Appraisal of the Evolving Legal Issues in ADMINISTRATION OF JUSTICE AND GOOD GOVERNANCE IN NIGERIA, Azinge & Adekunle (Ed.): Nigerian Institute of Advanced Legal Studies, 2011, 201, 205.
36. See section 9 & 10.See *Trebor Nig. Ltd v. Associated Industries Ltd (*1971) All NLR 468.
37. See section 3.
38. Section 14.

procedure and duration of registration,[39] assignment and transmission of trademarks,[40] the removal of trademarks,[41] rectification and correction of register, certification trademarks,[42] international arrangement,[43] powers and duties of the registrar[44] and legal proceedings on trademarks.[45] Patents and Designs Act, on the other hand, provides for the granting of patents[46] and registering of designs.[47] It provides, among other provisions, for patentability of invention,[48] the right to patent[49] procedure for application,[50] examination as to formality and grant of patent,[51] duration, surrender and nullity of patent,[52] compulsory and contractual licenses, [53]assignments and transfer of rights,[54] infringement of rights,[55] legal proceedings,[56] and foreign priority.[57] The Trademark and Patent Registry is responsible for the administration of industrial property rights. Therefore, IP governance is shared principally between two offices, namely, the NCC under the Federal Ministry of Justice and the Trademark and Patent Registry under the Federal Ministry of Trade and Investment, although National Office of Technology Acquisition and Promotion (NOTAP) under the

39. Section 23. See A. *B Cham & Co. Ltd. v. W. J Bush & Co. (*1996) FHLR 784.
40. Section 26.
41. Section 31.
42. Section 38.
43. Section 43.
44. Section 44.
45. Sections 1 and 2.
46. Section 5.
47. Section 13.
48. Section 1.
49. Section 2.
50. Section 3.
51. Section 4.
52. Section 7.
53. Section 11.
54. Section 24.
55. Section 25.
56. Section 26.
57. Section 27. In respect of designs, the Act provides for the nature and registration of industrial designs and the effect of registration. (Section 29).

Federal Ministry of Science and Technology is responsible for the regulation of transfer of technology involving trademarks, patents and designs.[58]

INTERNATIONAL INTELLECTUAL PROPERTY GOVERNANCE AND THE DEVELOPMENT NARRATIVE

FROM BERNE TO WIPO TO TRIPS: ONE HUNDRED YEARS OF INTERNATIONAL INTELLECTUAL PROPERTY LAW

It is necessary for our discourse to briefly summarise the historical trajectory of what is today known as the international intellectual property law, especially within the rubric of the development narrative. Drahos's characterisation of the history of IP into three phases of the territorial, the international and the global era conveys a succinct historical trajectory of the development of IP.[59] In all the phases, IP witnessed a progressive and incremental growth as a legal mechanism for allocating rights over knowledge and information, although in much contestation. The territorial period was limited to Europe and America. It was also extended to the European colonies in Africa, Latin America and parts of Asia. Compelled by the emergent industrial society, the extra-territorial protection of intellectual property in the comity of nations was the next logical progression from the territorial phase. Both the Berne Convention for the Protection of Literary and Artistic Works

58. Under NOTAP Act, the registration of licences and agreements on technology transfer is voluntary. *See Beecham Group Ltd .v. Essdee Food Produce Nig. Ltd* (1985) 3 NWLR (Pt. 11) 112. On the ground that failure to register a licence or contract does not render the contract null and void under the NOTAP Act. See Osunbor O. A (1987), Law & Policy on the Registration of Technology Transfer Transaction in Nigeria, 21 Journal of World Trade Law, No 5.
59. Peter Drahos: *supra* note 3.

and Paris Convention for the Protection of Industrial Property, the first copyright and industrial property treaties of 1886 and 1883, respectively, mark the beginning of the internationalisation of IP law. The Paris and Berne established the minimum principle of IPR protection which sets the template for future international IPR treaties. It took almost another century for the Rome Convention for the Protection of Performers, Producers of Phonogram and Broadcasting Organisations of 1961 to further expand the territory of IPR protection in the neighbouring rights regime. In a way, it cannot be far-fetched to say that Berne was inspired by Paris, while Rome which came almost a century latter was inspired by both Berne and Paris. Ultimately, the foundation for the multinational IP system was laid with these conventions which were first under a united administration of the United International Bureau for the Protection of IP (BIRPI) founded in 1893 and originally in Berne but later relocated to Geneva in 1960. By this time, many parts of the developing world were decolonising with new independent nations being admitted into the comity of nations. That development brought with it a deluge of development concerns in the emergent international IP relations. Pursuant to the Stockholm Convention of 1967, BIRPI eventually transformed in 1970 into WIPO as the organisation responsible for the worldwide promotion of intellectual property; later in 1974, WIPO became a UN specialised agency. It is, therefore, instructive as Deborah Halbert correctly posited that WIPO was 'born into the controversy of how IP would impact the developing world'.[60] However, it was handicapped in addressing that concern, notwithstanding the expressed objective in its founding instrument to "*promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other*

60. Deborah J. Halbert (2007): The World Intellectual Property Organisation Past, Present and Future, 54 J COPRIGHT SOC'Y USA 253, 262.

international organization"[61] which, to all intents and purposes, did not directly mandate the pursuit of development imperatives that have become one of the current engagements of the organisation and indeed the emergent international IP system.

From the initial four treaties under BIRPI, WIPO today administers a total of 24 treaties for its membership of 185 member states, an eloquent testament to the enhanced development and administration of intellectual property worldwide.[62] WIPO's diverse range of activities which include harmonizing national intellectual property legislations and procedures; providing services for international applications for industrial property rights; exchanging intellectual property information; providing legal and technical assistance to developing and other countries; facilitating the resolution of private intellectual property disputes; and marshalling information technology as a tool for storing, accessing, and using valuable intellectual property information.[63] WIPO represents a new era evident in the international phase of IP for a number of reasons that are critical to the development imperatives of today. First, WIPO personifies the supranational residence of IP under whose auspices countries accede to its norm-setting processes and instruments. Second, with WIPO, IP developed a more coordinated system at the international level, particularly an agency of the United Nations. Third, and significantly, IP began a trajectory of development along the North-South divide. Consequently, development imperatives began to animate WIPO's activities and new IP issues began to engage international attention such as the impact of new ICT on IP, traditional cultural expressions, public domain and other

61. See the Convention Establishing WIPO (Stockholm) July 14, 1967 as amended September 1979, Article 3. Available at *www.wipo.int/about-wipo/en/.*
62. Available at *www.wipo.int/about-wipo/en/* accessed on 25 August 2012. In its website, WIPO expresses its "mission to promote innovation and creativity for the economic, social and cultural development of all countries, through balanced and effective international IP system".
63. *Ibid.*

issues which led to the fourth and most recent development that ushered in the global era of IP. It is in the global era that the full force and import of the development imperative became more pronounced and profound.

INTELLECTUAL PROPERTY: THE GLOBAL ERA

The initial globalisation of IPR emerged triumphant at the conclusion of the Uruguay Round of Multilateral Trade Negotiations that saw to the agreement on TRIPS and consequently brought IP to the centre stage of global economic order. Largely following the structural framework of the minimum norms established under Berne and Paris, TRIPS for the first time represents a new global epoch signified by a reinforced minimum standard for the protection and enforcement of IPRs consolidated in one single document and linked to trade[64]. Significantly, TRIPS marked a watershed in the emergence and configuration of the extant global IPR architecture in many respects. At least, five important features underscore the defining vision of TRIPS and its impact on the global IPR governance. First, TRIPs without question singularly brought IPR into the globalisation era with all its nuances and manifestations. Second, it encapsulated IPR in one single instrument hitherto the subject of different international treaties. For example, the Berne Convention for the Protection of Literary and Artistic Works; Paris Convention for the Protection of Industrial Property; Rome Convention for the Protection of Performers, Producers of Phonogram and Rights of Broadcasting Organisations, among other treaties. Third, the IPR linkage with trade was entrammelled in the emergent wave of IP triumphalism with the dawn of globalisation in which TRIPS was birthed. That linkage with engendered the developing countries' engagement on the promises of economic growth and the trade-offs which emanated from that

64. Adewopo and Oguamanam (1999): Nigerian Trademark Regime and the Challenges of Economic Development, IIC Vol 30, No 6, 632.

engagement. Fourth, TRIPs for the first time in IPR history established enforcement machinery embedded in the General Agreement on Tariffs and Trade GATT/WTO Dispute Settlement System (DSU) which secures the obligation of WTO member states. Firth, the setting of a heightened threshold of IPR protection among World Trade Organisation (WTO) member states sought to effect a uniform global IPR law over and above existing treaties from TRIPS derived its one-size-fits-all appellation. TRIPS inevitably became the cornerstone of the global IPR order by which other IPR instruments are measured, including arguably the Berne which is reputed as the foundation of modern international IP law. In the words of a commentator, "Quite frankly, with regards to intellectual property, TRIPS tells all countries - developed, developing and least developed - what they must do and when and how they must do it".[65] The basis of this is underscored in the current wave of its impact on IPR systems, particularly on its development functions among developing countries which are signatories to the agreement. Developing countries have become the primary focus of recent evaluation of TRIPS and the subsequent TRIPS-plus developments which have been appraised as having discounted the "local needs, national interests, technological capabilities, institutional capacities and public health conditions"[66] of those countries, a phenomenon that is the recurring theme in the development imperative of today's global IPR system. Consequently, as mentioned earlier, if WIPO's birth was said to be controversial to IP's impact on developing world',[67] TRIPS could not have faired any better or even worse, particularly with the pervasive forum shifting or regime proliferation

65. Gerald J Mossinghoff: (2000) National Obligations under Intellectual Property Treaties: The Beginning of a True International Regime, 9 FED. CIRCUIT B J 591, 603.
66. Peter K Yu (2009): The Objectives and the Principles of the TRIPS Agreement, Houston Law Rev. Vol. 46, No 4, 979, 980.
67. Deborah Halbert *supra*.

phenomenon, that seeks to further complicate the already complex IPR global architecture.[68]

TRIPS 'complex regime' undertaken in historical contingency and the diversity of IPR values began to manifest in no time in the tensions among national IP systems that have made some appreciable progress in IP law and policy in the context of domestic development goals and conditions. TRIPS' concept of global IPR balance indicated in its heightened standard of protection, expanded the scope of IPRs in copyright, trademark, patent and newer rights; entrenched patentability in all fields including, an enhanced patent protection for pharmaceuticals; and demanded compliance that has dire consequences on the role of IPR system in the economy of many developing countries and indeed the prospect of development in those countries. In their critique of TRIPS, scholars and policy makers are no longer under any illusion of the certainty of its promises, despite its flexibilities and concessions for developing member states. Its famed impact as a one-size-fits-all supranational IPR code is a subject of the narratives that justify its reform for the 21st century global IPR system that answers to the demands of the development imperative in the developing countries, if IPR should remain an important instrument of economic development in the extant knowledge order. The one-size-fits-all debate has therefore become a ubiquitous narrative to gauge the impact of the global IP agenda and governance on the social, economic, cultural and technological development of developing countries.. The one-size-fits-all prescribes and pushes the rules of international law

68. See Laurence R. Heifer (2004) Regime Shifting: The TRIPS Agreement and the New Dynamics of International IP Law Making, Yale Journal of International Law, Vol. 29, 1, 6. The author in explaining regime shifting in the context of IP where developing countries are shifting negotiations to international regimes whose institutions, actors and subject matter mandates are more closely aligned with them in order to challenge established IP protection asserts that "IP regime shifting thus heralds the rise of a complex legal environment in which seemingly settled treaty bargains are contested and new dynamics of law making and siputes settlement must be considered"

into national law by which international IP system dictates domestic IP policy. That feature of international IP system has been the most dominant effect of the increasing efforts to harmonise national IP regimes under the current global governance, particularly with the coming into force of the TRIPS Agreement. Drawn from the contemporary postulate of IP as the iconic template both for private prosperity and public welfare, and reinforced by TRIPS' minimum rule of universal application, one-size-fits-all gained momentum in the sheer rigours of TRIPS' tenor that has proved to be fundamentally counterproductive in achieving the much needed balance in the global IPR system. The assumed objectives of promoting innovation that results from the heightened IPR protection enunciated under TRIPS have questioned its development balance and raised important concerns as to the viability of the instrument to developing countries despite its underlying objectives, concessions and flexibilities. TRIPS, unarguably, proceeded on a lofty objective but largely flawed provisions, that have ran against all odds.[69]

Article 7, in what can be regarded as a normative justification, declares TRIPS objective as follows:

> "The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligation".

69. See Graeme Dinwoodie & Rochelle Dreyfuss: A NEOFEDERALIST VISION OF TRIPS, THE RESILIENCE OF THE INTERNATIONAL INTELLECTUAL PROPERTY REGIME, 2012, Oxford, 21-45.

That objective defines the development balance of TRIPS but provokes the crisis of confidence and jurisprudence in its relation to the application of the global IPR rules that developing countries have continued to grapple with. The one-size-fits-all standard of IPR protection imposed by TRIPS has constituted a burden to many developing countries in terms of their various levels of inability to comply due to systemic and institutional weaknesses; this also results from their relative levels of underdevelopment. The overarching message is that the functionality of IPR protection is therefore not the same in the developed as it is the case with the developing or less developed countries.[70]

Flowing from that, the TRIPS Agreement therefore stands flawed *ab initio* in its lack of empirical evaluation in its negotiating process to support the sweeping breath of application of its provisions to all member states. Also the categorisation of developing countries into a single monolith for the purposes of applying the same rules of IPR protection is no longer tenable, particularly in the context of technological activity and the nature and structure of the economy, among other constituent indicators that are used to differentiate levels of development even within the same group of countries.[71] For instance, with regards to technological activity, the significance of patent varies by the level of technological development. While the developed countries benefit from strong patent protection, developing countries rarely benefit in terms of stimulating local innovation as they mainly use imported technologies rather than innovate or produce. A weak patent, therefore, helps indigenous inventive activities in the early

70. The Millennium Project Task Force on Science, Technology and Innovation of the UN recommended differentiation of countries based on the level of development for protection of IP rights; Juma C and L Tee-Cheong (2005), Applying Knowledge in Development, UN Millennium Project Task Force on Science, Technology and Innovation, London, Earthscan.

71. See Sarjaya Lall (2003): Indicators of the Relative Importance of IPRs in Developing Countries, IPR and Sustainable Development, UNCTAD – ICTSD Project on IPRS and Sustainable Development, Issue paper No. 3, 1.

stages to technological capabilities. TRIPS regime for enforcing strong patent to virtually all areas of technology is counterproductive to many developing countries that are still grappling with the challenges of technological development. The expansion of the scope of IPR subject matter to key areas such as pharmaceuticals and life forms including genetic resources has further worsened the negative effect of the one-size-fit-all approach. In the same vein, the stringent patentability requirement detracts from the social, economic and cultural development in these countries. Conversely, the growing creative sector in the music and movie industries in some developing countries like Nigeria can benefit from a relatively stronger protection which can also be gauged against the effect of the digital environment.

More informed opinion and evidence which suggest that the same level of IP protection will not necessarily and by itself generate positive impact have roundly challenged the foundations of TRIPS as a global edifice governing the prevailing geo-political and commercial realities.[72] I identify at least three of the important institutional contributions to the empirical analysis of the development impact of the global IPR system, among several other studies, which have helped to illuminate the veracity of TRIPS' promises and by evidential undertaking have rationalised its impact on development within the compass of economic analysis.[73] The contemporary global debate has now been captured "not only through the lens of

72. See Daniel J. Gervais (2009): Policy Calibration and Innovation Displacement in Neil Weinstock Netanel (Ed.): THE DEVELOPMENT AGENDA GLOBAL INTELLETUAL PROPERTY AND DEVELOPING COUNTRIES, Oxford University Press, 2009, 51, 52-54.

73. The three identified studies are, namely, the Commission on IPR, Integrating IPR and Development Policy (2002). (available online at *www.iprcommission.org)*; Carsteen Fink and Keith E. Maskus (2005) IP and Development, lessons from Recent Economic Research, World Bank and Oxford Uni. Press, and more recently Digital Opportunity: A Review of IP and Growth, An Independent Report by Ian Hargreaves, 2011, Commissioned by the British Prime Minister.

theory or doctrine but with an eye to the realities of political economy".[74] With reference to the first study, Fink and Maskus affirmatively assert the role of IP policies in fostering development and creating wealth but caution that with respect to developing countries, IP reform should not serve as an end itself on the pretext that "doing so will encourage innovation and growth".[75] In effect, the researchers conclude that the "net effect of stronger IPRs" is an empirical not a conceptual question. Secondly, the United Kingdom IPR Commission report addresses the historical, economic and empirical evidence of the impact of IP in developing countries and the lessons of the experience of developed countries. The report acknowledged a great deal of probabilities in the impact of TRIPS' standard of IPR protection, recognising the different levels and nature of development among developing countries. Thirdly, the Hargreaves Report, though within the narrow compass of the digital economy and copyright, reflects the current empirical trend that IP system should be developed according to objective evidence, balancing economic objectives against social goals and the potential benefit for right holders and consumers alike. From both the standpoint of economic analysis of IPR and international relations, the cumulative effect of these three studies and other similar studies evaluates the objective impact of TRIPS on the social, cultural and economic development of developing and less developed countries. They collectively enjoin a development perspective that should continue to accompany the progress of intellectual property governance both at international and national levels.

Just before I draw the curtain on this part in order to discuss two development agendas as case studies of the dynamics of the development imperatives in the global IPR system, permit me to

74. See Graeme B. Dinwoodie, Remarks: One- Size- Fits- All: Consolidation and Difference in IP Law, in Annette Kur and Vytautas Mizaras (Ed.): THE STRUCTURE OF INTELLECTUAL PROPERTY CAN ONE SIZE FIT ALL?, ATRIP, 2011, Edwards Edgar, 7.
75. See Fink and Maskus, 16.

briefly highlight an important subject, traditional knowledge (TK) that has featured prominently in the international IP system and has manifested in the developing countries' creative potential in the global knowledge basket. This subject is as controversial as it is emotive particularly among scholars and policy makers on the two sides of the global divide. The corpus of debate it has generated has carved a formidable school of thought in the characterisation of intellectual property as the quintessential knowledge system of universal acceptance. This debate will detain us briefly for three reasons. First, the debate is a context of one-size-fits-all that has continued to interrogate the dynamics and legitimacy of the global IPR regimes personified in TRIPS in its negation of the TK protection. Second, the debate underscores the critical element of IP as a template for development articulated not only in the text of international or national instruments but in the context of the interest of developing countries. Third, it brings to the fore the concerns and more than that, the cultural values or human right narratives of developing countries in the global IP governance. Those values or narratives are the recognition and protection of the vast cultural resources, expressions and creativity with their associated knowledge that constitutes what is known as traditional or indigenous knowledge (TK) in the current intellectual property system.[76]

The concept of traditional or indigenous knowledge including cultural expression is no longer a new one in IP discourse. Indigenous knowledge "refers to the knowledge held, evolved and passed on by indigenous peoples about their environment, plants and animals, and the interaction of the two. Many indigenous peoples have developed techniques and skills that allow them to survive and flourish in fragile ecosystems without causing depletion of resources or damage to the

76. I use the terms traditional and indigenous interchangeably for the purpose of this lecture without delving into the terminological debate of the scope or boundaries of the two terms.

environment"[77]. The attempt here is not to enter into another debate of definition as there is no contention that the term in its widest possible sense encapsulates the totality of the life and experience of a community of people expressed in their practices, beliefs, institutions, systems including their resources, natural or otherwise. Traditional knowledge therefore covers a wide range of tradition-based literary, artistic and musical works including performances, inventions, symbols, undisclosed information etc. These are applicable to various fields of knowledge in agriculture, bio-medicine, food, textile and other areas that command economic value in today's global industries.[78] The use of 'traditional' or 'indigenous' or 'cultural' to imply a body of knowledge outside the classical IP system has posed an intractable problem for international IP law in constructing a suitable or acceptable jurisprudence. Hence, the crisis of protection in the current global debate on the protection of TK particularly against the background of increasing economic value of the resources that constitute this type of knowledge that is resident mostly in many developing and less developed countries of Africa, Asia, Pacific and South America, and exploited by the large pharmaceutical, entertainment and media corporations of the developed countries as a localised protection, if any, may be largely ineffective against extra-territorial exploitation. The justifications for TK protection have been expressed in its economic value, the need to prevent bio-piracy and to improve the lives and conditions of the communities and TK holders and most importantly in the juridical context of its creative genus that is eminently eligible for protection.

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77. Erica-Irena A Daes: Some Observations and Current Developments on the Protection of the Intellectual Property of Indigenous Peoples (July 23 1998. (available at *http:www.wipo.org/eng/meetings/1998/indip/daes.htm)*
78. Coenraad J. Visser (2004): Making Intellectual Property Law Work for Traditional Knowledge in POOR PEOPLE'S KNOWLEDGE PROMOTING INTELLECTUAL PROPERTY IN DEVELOPING COUNTRIES, Michael Finger and Philip Schuler (Ed.), World Bank and Oxford University Press, 207.

The debate explores the epistemic differences between TK and IP to explain the failure or indeed the 'conspiracy', as it were, of the classical IP doctrine to protect TK. This epistemic censure from protection for TK denies the historical malleability of IP in accepting new norms for which TK cannot be an exception as a viable right for which protection can inure. That underscores the 'cultural relevance of IPR to all cultures' including creative knowledge, howsoever termed and confronts the narrative that seeks to "exalt[s] cultural dominance instead of challenging it: the status quo remains intact".[79]

The protection, preservation and safeguarding of TK continue to be pursued within the current international and global IP regime complex, particularly on three main fronts, namely, in the WTO/TRIPs Agreement with its Doha Declaration; WIPO's Inter-Governmental Committee on IP and Genetic Resources, Traditional Knowledge and Folklore (IGC/TK); and the United Nations Programme (UNEP)'s Convention on Biodiversity (CBD), all of which have developed some form of framework that demonstrates a momentum in the global protection of TK in varying texts and contexts, no matter how rudimentary, inconclusive or inadequate.[80] The tenacity of the cross-cultural dialogue that is further fuelled by the dynamics of globalisation, continues to drive ongoing developments in the protection of TK in the wider frame of IP episteme.[81] The cumulative effect of those three initiatives,

79. See Ruth Okediji (2003): The International Relations of IP Narratives of Developing Countries' Participation in the Global IP System. Sing. J.Y International and Comparative Law 7, 315, 356.
80. See Art. 27 of TRIPs and the para.6 of Doha Declaration (2001); Draft of IGC/TK (2000) on the provisions for protection of traditional knowledge and the provisions for the protection of traditional cultural expressions both (2005) which are the current initiatives for international legal instruments and Arts 2, 8, and 15 and related provisions of the Convention on BioDiversity (2002) on IPRs and access to genetic resources.
81. See Oguamanam, INTELLECTUAL PROPERTY IN GLOBAL GOVERNANCE A DEVELOPMENT QUESTION, Routledge 2012, 141-169.

particularly the TRIPS with the Doha Declaration (interpreting TRIPS Art. 27 (1)) and the CBD has engaged contemporary discourse not only on the import of TK protection in its specific detail but of the overall role of IP jurisprudence in advancing the development imperative which implicates the broader social, cultural and economic goals that IP protection ought to define and pursue for itself in satisfying the human needs of all societies. Let us now turn to the current engagement of IP with the development imperative in the context of the two development agendas of both WIPO and TRIPS/WTO as the two important components of the international IP regime complex.

A CASE OF TWO DEVELOPMENT AGENDAS:

The importance and topicality of IP in the recent global economic and political debates have brought it squarely within the sphere of development issues, and have consequently established IP-development nexus in the ensuing structure of international IP governance.[82] The critical and wide ranging issues of development today continue to test the foundations of IP more than ever before. [83]Consequently, the goals of IP are now fashioned and discussed among scholars and policy makers

82. The concept of development is a contested and multidisciplinary phenomenon that embraces the idea and ideals that are commonly used to denote every facet of the positive conditions as well as the process of societal progress or movement towards an optimal state of being (equilibrium). Recent studies in social science and international relations have emphasized 'development' more in the context of economic development which relates essentially to a comparative relation of a country's measurable economic performance or output and 'sustainable development', a more encompassing idea that captures the social, economic and environmental considerations in meeting the goals of human needs both for the present and the future 1. There is a third variant of development – human development which emphasises social and welfare needs of the people to the existing economic consideration (See *www.icsd.org/sd/*
2 *www.undp.org/en/reports* See *www.undp.org/en/reports*).

83. Christopher May (2003) Why IPRs Are a Global Political Issue, European Intellectual Property Review, 25, 1, 1-5.

in the context of development that is both critical and instructive to the new global equation between the developed countries on the one hand and the developing countries on the other hand. The emergent global issues of public health, cultural heritage, food security, technological development and public welfare pose important challenges to the veracity of IP rules in many ways that were not fashionable when the rules came into being over three centuries ago. One of the most pressing questions of the moment is the broader public policy concerns on how IP can meet the essential human needs in the basic health, food and socio-economic survival.[84] Riding on the crest of the international regimes, IP has set for itself the agenda of pursuing development goals in its increasingly complex and diverse architecture of institutions, instruments and norm-setting activities. From the early 1960's till date, the history and the momentum of the development question with the international IP law loomed large. It became apparent not only to define or characterise IP in the structure of works and the rights that were rapidly expanding to the advantage of strong IP holders but in the response of the international IP system to the development concerns of developing countries. As rightly noted by Peter Yu that this group of countries as far back as the 60s and 70s have

84. Human Development Reports by UNDP since 1990 have applied the concept of human development to diverse themes such as the environment, globalisation, cultural heritage, poverty, gender, among other issues of increasing global attention. The function of development became circumscribed within the defined goals of what is now commonly referred to as the Millennium Development Goals (MDGs) articulated under the United Nations Millennium Summit of 2000. The eight goals encompassed the concept of development (in its widest sense, whether 'human', 'economic' or 'sustainable') to cover the following; 1. Eradicate extreme poverty and hunger, 2. Achieve Universal Primary Education, 3. Promote gender equality and empower women 4. Reduce child mortality, 5. Improve maternal health, 6. Combat HIV/AIDS, Malaria and other diseases, 7. Ensure environmental sustainability, 8. Develop a global partnership for development. These goals have therefore driven the pursuit of development in all categories of countries and have become significant factors of development, particularly in the context of growing economies in the new global economic order.

"repeatedly expressed serious concern about the inappropriateness of the international intellectual property system for their own economic, social cultural and technological development".[85] That early push of the development imperative was characterised by significant developments in the international IP framework, such as Stockholm Protocol to the Berne Convention of 1967, which resulted in the creation of WIPO in 1970, the development of the international Code of Conduct on the Transfer of Technology under the auspices of UNCTAD of 1978 and the failed revision of the Paris Convention in the early 80s as a result of the demand for the first time within the UN system by developing countries led by Brazil for the protection of IP "favourable to their economic development, including proper controls against abuse, thereby putting 'development' issues and 'public interest concerns' on the international IP agenda.[86]

If it was correct that "the international IP system cannot operate in isolation from broader public policy questions such as how to meet human needs as basic health, food and a clean environment",[87] it was clear that what was known as the New International Economic Order (NIEO) failed to directly address IP issues particularly in its development impact. However, whilst those series of developments on what could be termed as "the Old Development Agenda" brought about a consciousness of discontent with the international IP system in addressing the needs and local conditions of many developing and less developed counties of Africa, Asia, South America and the Pacific, it is the Doha Development Agenda in 2002 pursuant to and following the WTO/TRIPS Agreement and the WIPO Development Agenda in 2004 that could be said to represent the

85. See Peter K Yu (2009): A Tale of Two Development Agendas, Ohio Northern Univ. Law Rev., Vol. 35, 465, 468.
86. See Andrea Koury Monescal (2005) Changing WIPO Ways? The 2004 Development, Intell. Prop. 761, 787.
87. See Pascal Lamy: Director-General WTO at the WIPO Conference on IP and Public Policy Issues, Geneva, 14 July 2009, available online at *www.wipo.int.*

classic intellectual property-development nexus within the text and context of international IP system.[88] From the standpoint of the strict rules of international IP law, these two instruments recognise and address the development imperative within the IP framework in specific detail that has engaged scholarly debate and policy considerations since they were both instituted. I therefore use the two development agendas as the model for the analysis of IP-development imperative and framework within the international IP regime complex.

Doha Development Agenda

The Doha Development Agenda or what is known as the Doha Declaration proceeded upon the fundamental *objectives* and *principles* articulated under Articles 7 and 8 of the TRIPS agreement respectively.[89] The tenacity of these objectives and principles was tested in their impact on the interpretation of Article 30 (3) when the public health debate broke out in the wake of the global HIV/AIDS pandemic which questioned the role of IP on access to patented medicines, particularly as it concerned the developing countries in Africa, Asia and South

88. Apart from WTO and WIPO, there are other international fora that recognise or discuss IP and Development generally and with particular reference to other development issues such as human rights, bio-diversity, food and agriculture, information and communications technologies and others, for instance UNCTAD, ILO, UNDP, UNIDO and other UN and non-UN organisations.

89. Article 7 states "The protection and enforcement of IPR should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations". Article 8(1) states "Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition and to promote the public interest in sections of vital importance to their socio-economic and technological development provided that such measures are consistent with the provisions of this Agreement".

America.[90] That global public health concern appeared to have congealed at the doorstep of intellectual property as a vital tool for finding an acceptable solution to the inability of many developing countries to provide patented antiretroviral therapies to save their affected population. The TRIPS Agreement in Article 30 which permits the limitation of patent tenure and more particularly Article 31 which allows use by government authority under specific circumstances to access medicines for public health emergencies (which provision also extends to compulsory licence, though that term is not used in the text), took the heavy burden as a pillar on which the global consensus could rest not only to balance the contending interests but also to anchor the aspirations of those countries whose productive population have been severely threatened by the HIV/AIDS pandemic. It became a major developmental issue with far reaching social and economic implications that led to the adoption of the Doha Ministerial Declaration and the Declaration on the TRIPS Agreement and Public Health (Doha Declaration) at the 4th WTO Ministerial Conference in 2001. That Declaration undertook to bear that burden on behalf of the TRIPS Agreement as it sought to clarify the relationship between TRIPS and public health.[91] It was against the

90. This provision was invoked by Canada in the Canada-Patent Protection of Pharmaceutical Product case WT/DS114/R (Mar. 17, 2000) where the WTO Panel addressed the consistency of relevant provisions of Canadian Patent Legislation with the objectives and principles of the TRIPS Agreement.

91. See Adebambo Adewopo (2011), Public Health, Access to Medicines and the Role of Patent System in Nigeria, [NJIP] Maiden Edition, 164 at 178-185; see also Sandra Bartlet (2003), Compulsory Licences Pursuant to TRIPS Article 31 in the Light of the Doha Declaration on the TRIPs Agreement and Public Health, J. W.I.P.: Vol 6, No. 2, March 2003, 283, at 294 – 305. See WTO WT/L18295 Dec 2011, Amendment to the TRIPS Agreement – 3rd Extension of the period for the Acceptance by members of the Protocol amending the TRIPS Agreement, Decision of 30 November 2011. Available online at *www.wto.org/english/laptop_e/trips_e/pharmpatent_e.htm*. See also the TRIPS Council Decision on Extension of the Transition Period under Art. 66.1 of the TRIPS Agreement for Least Developed Countries for tertian obligation with respect to pharmaceutical products. These categories of countries will not have to protect pharmaceutical patents and test data until

background of discontent against TRIPS Agreement by developing countries in the pursuit of critical public health policies following the HIV pandemic and the feeling that the agreement constituted an 'obstacle to development' that the Doha Declaration came into being.

Three features of the Doha Declaration underscore its significance and impact in addressing the public health and indeed the development imperative. First, the clear statements that "the TRIPS Agreement does not and should not prevent members from taking measures to protect public health, taken together with the affirmation that "TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health" are consistent with the dictates of the development imperative. Second, is the substantive validity and enforceability of the contents of the Declaration in enforcing members' rights and obligations in the context of WTO dispute settlement procedures under the TRIPS Agreement. Third, the affirmation of the use of the various flexibilities available in the TRIPs Agreement in balancing members' rights such as the right to grant compulsory licences and the freedom to determine the grounds upon which such licenses are granted; to determine what constituted a 'national emergency' or other circumstances of extreme urgency or to establish their own regime of IPR exhaustion, among other flexibilities. In that regard, the Declaration upheld the validity of TRIPS objectives and its interpretation in line with the Vienna Convention on the Law of Treaties.

Significantly, the famous paragraph 6 of the Doha Declaration which recognises the difficulties of member

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January 2016. *www.wto.org/english/tratop_e/trips_e/pharmpatent_e.htm).* See para. 19 of the Doha Ministerial Declaration. Among the countries which have adopted or implemented the waiver which takes effect as amendment to the TRIPS agreement (either to act as exporter or importer in their domestic laws) are Norway, Canada, India, EU/EC, Hong Kong, Switzerland, Philippines, Singapore, Albania, Croatia, China and more recently Republic of Korea and Japan. See *www.wto.org/enlish/tratop/e/trips_e/par6laws.e.htm)*

countries with insufficient or no manufacturing capacities in the pharmaceutical sector in making effective use of compulsory licensing under the TRIPS Agreement, sought and obtained ratification to further extend the earlier extension for countries with insufficient or no manufacturing capacity to import genetic versions of on-patent pharmaceuticals, with subsequent extensions.[92] The Doha Declaration also reinforces its development focus with the affirmation of the "relationship between the TRIPS Agreement and the Convention on Biological Diversity and the protection of TK and Folklore", a clear indication of the growing momentum, despite the apparent challenges, of the development perspectives of the current international IP system.

WIPO Development Agenda

The development imperative also took a centre stage at WIPO with the historic proposition from developing countries in October 2004 which launched what is now known as the WIPO Development Agenda. Encouraged by the growing tension in the global IP system, Brazil and Argentina announced a proposal which called on WIPO "to take immediate action in providing for the incorporation of a Development Agenda in the organisation's work program". [93] This is a significant milestone in the history of WIPO as an organisation which represents the first major multilateral IP regime established for the promotion and protection of IP. Arguably, the foundation of WIPO's

92. The new extension further renews the earlier 2011 extension till 2013 for the countries concerned to import generics.
93. See WIPO Proposal to Establish a Development Agenda for WIPO: An Elaboration of Issues Raised in Document WIPO/GA/31/II, IIM/1/4 (April l6, 2005 available at *www.int/edocs/mdcs/en/iim_1_4pdf.*
See also *www.wipo.int/treaties/en/agreement accessed 02 July 2012).*
See DJ Halbert (2007) "The World Intellectual Property Organisation: Past Present Future" J. of Copyright Society 54, 253. See also Oguamanam C, INTELLECTUAL PROPERTY IN GLOBAL GOVERNANCE, DEVELOPMENT QUESTION *supra* 2012, 56. See Article 1 of the UN-WIPO Agreement.

development imperative could be anchored on the wave of the independence of many colonies across Asia and Africa which acquired the status of independent countries and subsequently member status of international institutions, including WIPO. But the development imperative for WIPO could not be easily ascertainable in the prevalent atmosphere of IP triumphalism which attended the birth of the organisation in which many developing countries were not part of.[94] The UN-WIPO Agreement, unlike the enabling convention establishing WIPO itself, firmly etched the development objective in WIPO's outlook as expressed in the nature of "promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development", a clear development undertaking. The entry of WTO with its TRIPS agreement, into the world of IP governance and the subsequent WTO–WIPO Co-operation Treaty may have further reinforced WIPO's development pursuit. The Treaty, which obliges WIPO to provide technical assistance for TRIPS implementation in developing countries including both WTO and non-WTO members, can be considered one of the pillars of WIPO Development Agenda.

With the Development Agenda, a new vision of IP propelled by the pursuit of development was born and entrenched as a cardinal objective of WIPO's future engagement. The Agenda itself formally adopted at the 2007 General Assembly constituted 45 recommendations to be administered by the Permanent Committee for Development of IP (CDIP) opened a new operational direction into WIPO's work programme, inclusive of its norm-setting activities. The Agenda's 45 recommendations are organised into six clusters namely: (1) Technical Assistance and Capacity Building, (2) Norm-setting Flexibilities, Public Policy and Public Domain, (3) Technology Transfer, Information and Communication

94. DJ Halbert *supra* 253.

Technologies (ICT) and Access to Knowledge, (4) Assessment Evaluation and Impact Studies, (5) Institutional Matters including Mandate and Governance, and (6) other issues such as a balanced approach to IPR enforcement to the "mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare and to the balance of rights and obligations" in accordance with Article 7 of the TRIPS Agreement. The incorporation of TRIPS provision in the recommendations is significant to the WIPO–WTO co-operation multilateral IP regime. Scholars and policy makers have expressed a variety of views on the significance of a Development Agenda in the overall context of WIPO developmental initiatives.[95] The Development Agenda assumed the status of an official WIPO charter issued for the advancement of the development imperative that is so needed in the global IP equation. With it, the substantive and strategic use of IP in the development goals of many developing countries, including the protection of TK and cultural expressions of indigenous peoples appears to be firmly secured and infused into WIPO's programme of activities. By November 2012,

95. Okediji posits that Development Agenda opens a 'doctrinal' or 'ideological' space in the current global IP regime. See Ruth Okediji (2009) History Lessons for the WIPO Development Agenda in THE DEVELOPMENT AGENDA, GLOBAL INTELLECTUAL PROPERTY AND DEVELOPING COUNTRIES, (Neil Weinstock Netanel (Ed.), Oxford University Press, 2009, 137, 154-156; Jeremy De Beers submits that Development Agenda represents a "paradigm" shift for IP Policies in the twentieth-first century". See Jeremy De Beer, IMPLEMENTING THE WIPO DEVELOPMENT AGENDA, Ottawa, 2009 CIGI/Winifred Laurier University Press 2; According to Chidi Oguanamam: "the Development Agenda is important platform for taking the crisis of equity into which the WIPO and the WTO/TRIPs Agreement plunged the global IP system", See IP IN GLOBAL GOVERNANCE, supra 72; Peter Yu's characterises the Development Agenda as a 'reform'. He classifies the reform into two directions namely, one internal, the other external; that is, reform directed at WIPO as an institution and the other that "focuses on restoring balance in the int'l IP system". See Peter K Yu (2009) A Tale of Two Development Agendas supra 565, 519-520.

CDIP would have held ten sessions in its four-year history.[96] Its activities under the agenda have touched upon the various clusters of recommendations where developing countries have benefited or have prospects of benefit. However, the true test of its success would lie in the level of the impact of its implementation in the shaping of IP policies in developing countries.

For an organisation whose ascendancy owed less to any definitive development resolve than the need for an institutional regime wrought by the wave of internationalisation of IP, WIPO has gradually evolved as an IP body committed to the promotion and development of IP in the developing world, particularly in its current engagement under the development agenda. There is no doubt that the development Agenda provides the philosophical dynamism and process for the attainment of the wider socio-economic, cultural and technological developmental objectives. In the framework of the global multilateral institution, both WTO and WIPO represent the supra-national governance to deliver the utilitarian value of IP as the dominant knowledge system for the good of the two divides of the global knowledge economy. The progress of the two Agendas therefore presents the two principal fronts in which the development imperative can be settled as well as the compass by which the future of IP, particularly among the developing countries, can be perceived. That future is here in the context of the direction of IP reforms taking place in these countries. Permit to now turn to the issue of IP reform in Nigeria.

RECONFIGURING INTELLECTUAL PROPERTY LAW AND POLICY FOR DEVELOPMENT

THE NEED FOR REFORM

96. The 1st session of the CDIP took place from March 3 to 7 2008 and attended by 99 member States, 7 intergovernmental and 31 NGOs.

It is significant to note that the need for the reform of IP laws should not merely be informed by a stereotyped introduction of new IP rules but more by a nuanced and strategic revision of IP law consistent with the socio-economic conditions and defined development objectives, in an environment that is desirous of transiting into a competitive knowledge economy. IP law reform is justified by the paramount need to birth a knowledge economy that supports or contributes to the overall economic growth. The rationale for law reform is not further a blanket or strong IPR standard that is now largely discredited in contemporary IP studies. It requires a careful understanding and analysis of the present state of the law in relation to the prevailing realities requiring policy consideration that will promote investment in innovation and creativity and the emergence and sustenance of a viable local knowledge economy.

Consequently, the imperative of IP law reform is strong for the realisation of domestic developmental needs and goals, and for compliance with global standards, both carefully balanced one against the other. For instance in the area of patent law, it may be necessary to satisfactorily answer the question: what is the best approach to determining the standard of patentability for invention in a net technology- consuming or importing country like Nigeria in order to allow local technology developers leverage on existing technology to innovate and thereby spur indigenous innovative enterprise? How would trademark law be used to promote and protect the local manufacturing industries in the vital sectors such as textile, agro-allied or other cultural products of relatively comparative advantage in regional and global trade? Similarly, how can copyright law support the entertainment industry as the flagship of the Nigerian copyright industry? On the other side, the imperative of reform also compels national responses to the global IPR standard, particularly with the advent of TRIPS, which may be irreconcilable in some specific circumstances, with domestic IPR needs or conditions, notwithstanding the

obligations under relevant IP treaties.[97] IPR reform in Nigeria is therefore underscored by those twin imperatives and the direction is largely dictated by their interaction.

REFORM ATTEMPTS

Well before the obligation imposed by TRIPS, Nigeria had commenced a process of review of all its IP laws. The attempt at the reform of IP law in Nigeria dates as far back as the 80s and has thrived in a constant state of flux as we will see in this part. The attempt demonstrated a marked consciousness among IP practitioners and stakeholders in the relevant IP sectors in terms of the importance of the laws in relation to the three main areas of IP but which proved inadequate and obsolete. By the 80s, it was clear that the IP laws were in need of review in the light of the economic, technological and industrial changes that had taken place. The Nigerian economy was experiencing significant growth resulting primarily from the oil boom. For instance, the National Industrial Policy (1989) recognized the importance of the patent system through the protection of the results of the activities of firms engaged in Research and Development (R &D) for improvement of their processes and products. The Copyright and Patent Acts, both of 1970 and the Trademark Act of 1965 were no longer suitable for the protection of the various creative, trading and other innovative assets that had accompanied a manifestly bourgeoning stream of economic activities. Those legislations were the first post-independence IP laws which modestly maintained the status quo of the post-colonial era but were already trailing behind in the protection of the creative base of the then fledgling economy.[98]

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86. In 1995, Nigeria became a member of the WTO. On June 10, 1993, Nigeria deposited its articles of accession to the Berne Convention to become effective on September 14, 1993; a member of the Lisbon Act of the Paris Convention on September 2, 1963; deposited its instrument of accession to the Convention establishing the World Intellectual Property Organization on January 9, 1995, to become effective April 9, 1995.
98. A good example of the post-colonial status quo with respect to patent law was the re-registration of patent system which automatically required registration

The first IP initiative was to be launched in the area of copyright.

In effect, the history of IP reform attempts beginning from the '80s could be divided into two main periods, both periods unfortunately are now part of an unsuccessful history of IP law reform with the exception of copyright law which itself requires further review. The first period of IP law reform beginning in the early '80s was pioneering and by historical account 'developed out of the lobbying of the indigenous copyright industry'.[99] The pressures for reform were actuated by the growing scourge of piracy of books and music which necessitated the mobilisation of the book publishing and the music industries to press for copyright law reform. At the end of 1988, the Copyright Act of that year had been promulgated.[100] This successful development was followed in quick successions by two amendments in 1992 and 1999 respectively to principal act, thereby completing the first period of copyright law reform that still represents the extant state of that department of

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of already granted patent and which was carried from and still generally maintained among the newly independent countries. It meant that Nigerian Government could not grant compulsory licence under the re-registration of UK patent system, and with the court's imprimatur in *Rhone Poumlenc & Anor .v. Lodeka Pharmacy* (1965) LLR 9, the patent regime did not permit Nigerian Government to exercise the prerogative of the British Crown under the Registration of United Kingdom Patent Ordinance 1929 which was then applicable to Nigeria. This perceived as having undermined the powers of the Nigerian Government to allow the defendant in that case to supply of patented drug. As a political matter, the military government nullified that decision with the promulgation of the Patent Rights (Limitation) Act 1968 to grant the Nigerian Government and its agencies powers analogous to those vested in the British Crown under section 46 of the UK Patent Act 1949, a position that was maintained in the Patents Act of 1970.

99. See Bankole Shodipo, PIRACY AND COUNTERFEITING, GATT, TRIPS AND DEVELOPING COUNTRIES, *supra* 27.

100. This followed the directive of the Attorney-General of the Nigerian Law Reform Commission which produced the draft Copyright Act in December 1988 and which was promulgated into Copyright Decree No. 47 1988 dated 19th December 1988.

intellectual property law in Nigeria.[101] This period also covered the unsuccessful attempt to review the industrial property regime comprised in the Trademark and Patent Acts of 1965 and 1970 respectively, which featured the same 'encouraging' interest and responses from the industry, as was the case with the copyright sector.[102] The draft industrial property bill produced in 1991 sought to integrate the trade mark, patent and designs law into a single industrial property law to be administered by an industrial property office,[103] with far reaching changes to both trade mark and patents law in order to bring them in line with current commercial and technological development as well as the international intellectual property norm.[104] However, it did not result into a new legislation despite

101. See Working Paper on the Reform of Industrial Property Law, Nigerian Law Reform Commission, 1990, 1.
102. See Working paper 1-2. Orojo's report revealed that 'comments were received from judges, Attorneys-General, Lawyers, Industrialists and very many organisations such as the National Association of Chambers of Commerce and Industries, Mining and Agriculture (NACCIMA), Manufacturers Association of Nigeria (MAN), Institute of Chartered Accountants of Nigeria (ICAN), Nigerian Association of Small Scale Industrialists (NASSI), Nigerian Society of Engineers (NSE), Institute of Chartered Secretaries and Administrators (ICSA), relevant Ministries (Trade, Industries, Science and Technology and Education), National Office of Industrial Property, interested international organisations, foreign, legal and industrial property practitioners, and others.
103. See Draft Industrial Property Decree, Part I.
104. In the area of trademarks, the new Bill *inter alia*; extends protection to Service Marks, Collective Marks, and Trade Names. Provision is also made for protection of Well Known Marks. In Patents, Protection has been extended to cover Layout Design as well as Utility Models. The new Industrial Designs Bill extends protection to products of Handcraft. One of the innovations of the draft legislation is the protection provided for plant varieties, animal breeders and farmer's rights. The new Bill, *inter alia*, establishes a Registry for Plant Varieties, Animal Breeders, and Farmers Rights; sets conditions for registration of extant varieties and new varieties; It provides for persons entitled to registration which include breeders of variety or breed, or their successors and assigns, farmer or group of farmers or community of farmers claiming to be the breeder of the variety; an authorized person, or University or publicly funded institution claiming to be the breeder of variety or breed. Registration confers an Exclusive right on the breeder or his successor, his

the high expectations that the Trademark and Patent Acts would be repealed for a new industrial property law to be promulgated, like its copyright counterpart.[105]

Almost a decade later, at the opening of the Workshop on Teaching of IP for African Region organised jointly by WIPO and the Nigerian Government in September 1999, government reportedly announced the re-organisation of IP administration in Nigeria with the establishment of an Intellectual Property Commission for the whole field, including copyright despite the already established legal and institutional framework for copyright administration under the 1988 copyright act. Consequently, an inter-ministerial committee of representatives of the various IP administering agencies and relevant stakeholders was constituted to work out the modalities for establishing an all embracing IP agency which will be responsible for copyright as we as industrial property. In addition, the committee made recommendations for review of extant IP laws. That policy pronouncement was merely symbolic and short-lived.

The second period of the history of IP law reform began with the effort to revive the previous unsuccessful attempt with the preparation of the Nigerian Intellectual Property Commission (NIPCOM) draft Bill in 2007, which aimed at a comprehensive reform towards the harmonization of the administration of IP matters including copyright. In the late 2006, a draft NIPCOM Bill which built upon the earlier Industrial Property Bill, which included copyright was produced as an Executive Bill as part of the Reform Agenda of the Federal Government.[106] Reform of industrial property regime

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agent or licensee, to produce, sell, market, distribute, import or export the variety or breed.

105. See generally both the Report and Working Paper, Industrial Property Reform, Nigerian Law Reform Commission, 1990.

106. See the Presidency, News Release dated 30th April 2007. Presidential approval was obtained for the integration of the Patent and Trademark Registry into the Nigerian Copyright Commission to form the Nigerian IP

had become a matter of urgency. A new trademark regime was long overdue to reflect the far-reaching changes in the commercial environment. The same could be said of patent as an important regime for the protection of inventions and new technologies which had become crucial in encouraging investment in technological innovation. Indeed that was the intention of the reform of industrial property law which produced the 1991 Report of the Nigerian Law Reform Commission. Accordingly, NIPCOM draft bill covers the broadcast scope of subject matter of IPRs so far in the history of IP law in Nigeria. It listed, inter alia, copyright, trademarks, service marks, patent and designs, plant varieties, animal breeders' and farmers' rights. The proposed legislation contains provision, which is intended to align the Nigerian IP regime with international standard, and also enhance domestic practices and the protection of IPRs. That attempt also featured a separate copyright law reform which produced a draft Copyright (Amendment) Bill 2010, an amendment of immense importance to copyright law in the context of the emergent technological and digital environment, which attempt appears again to have been revived by the current revision exercise of the copyright and trademark law being pursued under separate institutional initiatives.[107]

The reason that can be adduced for the unsuccessful spate of IP law reform initiatives is more political than legal. The inability to revise IP law was not consistent with the realisation of the importance of IP in Nigeria; rather a sheer lack of political will and legislative action was evident. Over two decades have passed in the protracted history of IP law reform in Nigeria, since the first industrial property draft bill of 1991

Commission (NIPCOM) while NOTAP should continue to exist to promote and administer technology acquisition.

107. The Nigerian Copyright Commission has reported in its website that it is undertaking the review of copyright law while the Nigerian Law Reform Commission has currently commenced the revision of the trademark regime. See *www.copyright.gov.ng* accessed 13th September 2012.

with subsequent draft bills covering the whole or part of IP without the prospect of legislation. The drafts bills would have made significant improvement in the development of IP administration, jurisprudence and practice. Clearly, lack of legislative appreciation and prioritisation of IP relative to other matters on the legislative agenda has largely informed both the old and the recent failed attempts at reform.

REFORM: A PRO-DEVELOPMENT VISION

The socio-economic value of IPR in the vital sectors of the economy has defined IP law reform along developmental lines.[108] This approach entails a combination of social, economic, political and global dimensions in IP law and policy reform. It is now understood that the underlying importance of IPR policy is contextual and strategic and should be suitable for the purposes of protecting creativity and innovation that is conducive to the pace and pattern of development of a particular environment. That is the context of a pro-development vision of IP that should be advanced in Nigeria. In this final part of my lecture, the attempt is to set the parameters for the structure and function of IP law that will form the framework for development. I have set out four basic frameworks in reconfiguring IP law reform in Nigeria. However, this framework is informed by three key perspectives which characterise contemporary IP law and policy making.[109] The first is based on the utilitarian or social welfare principle which requires the law to define the objectives and boundaries of protection in providing incentive and access to knowledge, education, technology and other social benefits that would

108. See Christopher Arup & William Van Caenegem: Themes & Prospects for Intellectual Property Law Reform in IP Policy Reform, Fostering Innovation and Development Christopher Arup & W.V. Caenegem (Ed) 2009, EE, I. See also Rami Olwan and Brian Fitzgerald (2012), Intellectual Property and Development-A Road Map for Developing Countries in the 21st Century, NJIP, Vol. 1, No 2, 44.

109. See M.P. Pugatch: INTELLECTUAL PROPERTY POLICY MAKING IN THE 21ST CENTURY (2011) 3 W.I.P.O J Issue 1, 2011, 71.

accrue to the country. It measures the cost and benefit of protection and the social equilibrium resulting from granting private exclusivity and public access. Second is the economic policy dimension which thrives on the realisation of the economic significance of knowledge assets that form the basis of IP. Economic policy context optimises the prevailing conditions that promote both the creation and exploitation of IP. [110] It is therefore vital for IP policy formulation and analysis to assess the existing potential for creating IP asset in the country and the measures to be taken to encourage and harness those valuable assets. There is more potential in certain areas such as music and movie products as well as other innovative enterprise, especially in cultural products and more recently in software development than other areas that will determine the appropriate categories of IP will best serve the diverse and peculiar needs of the society. Third, the global dimension has become an important influence on national IP law and policy, particularly in relation to the dominant multilateral agreements and treaties under WIPO, the WTO Agreement on TRIPS and other relevant IP related regimes, all of which establish minimum threshold which signatory countries must enforce by local IP legislation.[111] Those three postulates, therefore, set the tone for the task of critically re-evaluating our IP needs in the light of growing capacities and conditions of creativity and innovation that a sound IP law would promote and serve. I

110. See M.P. Pugatch: Creation and Exploitation – Analysis of Sweden's IP Performance (Sweden: TIMBRO, 2006. IP creation involves translating the creative and innovative base into exploitable IP asset in critical areas whereas IP exploitation involves the national capacity to commercially exploit IP asset that is already generated or created.

111. The regional, bilateral and plurilateral agreements are also significant. See ARIPO and OAPI, the two African IP organisations. See also the Anti-Counterfeiting Alliance (ACTA) which was finally adopted on April, 15, 2011 involving eight countries – Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea and the US with the aim of setting a new and higher bench mark for international IP enforcement. ACTA has been widely criticised and referred to as a 'bad country club'. See Peter K. Yu, ACTA and its Complex Politics (2011) 2 WIPO J. Issue 1, 1.

hereby set out the thrust of the four parameters that should define future the IP law and reform in Nigeria:

Subject Matter of Intellectual Property Rights

Part of the challenge of classical or traditional IP is its continued ability to sustain its current architecture or wholesome in the dominant subject matters, as we know it, namely, copyright, trademark, patent and design. New IPRs have been introduced in recent years as a result of economic and technological developments some of which hardly fit into the traditional categories of copyright, trademark or patent properly so-called. The expansion of IPR categories has accommodated new and emerging technologies in semi-conductor topography; database and other relatively recent classes of IPR in trademarks and patent law. Neighbouring rights regime, which for instance, deal with unfixated creations such as live performances and expressions of folklore are now subject of protection in many countries including Nigeria. In developing a regime for protecting a form of IP, it must be settled what types of subject matter would be involved.[112] The Copyright Act has conveniently included six categories of works, namely literary, musical and artistic works, sound recording, cinematographic film and broadcast. In addition, it has introduced for the first time in Nigeria the neighbouring rights regime to protect live performances and expressions of folklore, an important subject of TK which has continued to engage the contemporary boundaries of IPR episteme. Many countries, specially developing countries are already devising systems of protecting TK despite the unsuccessful attempt at achieving international protection.

It is therefore crucial to strengthen IPR protection of TK, cultural expressions and genetic resources. The definitional category of expression of folklore can be expanded to cover more forms of identified cultural expressions under a carefully

112. See Cornish, INTELLECTUAL PROPERTY, 3rd Ed, Sweet & Maxwell, II.

conducted database for that purpose. This is why the protection of indigenous creative and innovative activities and more particularly in the area of genetic or bio-cultural resources and their associated knowledge should be reflected in the Nigerian IP law. The reason being that economic and industrial activities best afford comparative advantage for those types of IPR protection for local creative and innovative enterprise such as agricultural or agro-allied and textile industries that patent for instance, can protect with respect to their processes and products, or for trademark law to protect the collective, certification and geographic indication (GI) for the products. There is the need to include the protection of the right of performers in their audio-visual performances in response to the new international protection under the recent WIPO Treaty for the Protection of Performers in their Audio-visual Performances adopted last June in Beijing. This should concern Nollywood, Nigeria's home movie industry and its cast of performers as a formidable cultural product of national value. Nigeria, under the auspices of Nigerian Copyright Commission, led the African Regional Consultation held in Abuja-Federal Capital Territory in October 2010, which contributed immensely to the final adoption of that treaty. Nigeria's active participation in the Treaty's process was largely informed by the need to enhance the protection of audio-visual performance in Nigeria's flagship Nollywood Industry.

In the sphere of industrial property, the draft industrial property law has correctly identified and included important IPR subject matter of comparative value not currently protected under the extant Trademark and Patent Acts. The subject matter of shapes and packaging, service marks, collective marks, utility models, and character merchandising are viable trading and innovative devices that would help IP law respond to the prevailing commercial and technological conditions in the country. It is incumbent on Nigeria to protect its wealth of bio-diversity, including bio-cultural resources and their associated knowledge which has proved useful in biotechnology industries

for drugs, foods and other industrial purposes.[113] The global extension demonstrated in TRIPS of the scope of patentable subject matter to virtually all areas of technology and creativity, for instance to pharmaceuticals, life forms, genetic resources and plant varieties[114] without the inclusion of TK negated a balanced and development focussed IP system, a lacuna a national IP law can fill to allow its rich cultural, biological and genetic resources and its associated knowledge to qualify for patent, copyright or other IPR protection. The patent exclusion under the Nigerian Patents and Designs Act of "plant or animal varieties or essentially biological processes for the production of plants or animal (other than microbiological processes and other product" should be reviewed in line with current scientific and IP practices in the light of advances in the biotechnology industries. However, the current trend in TK protection seeks to build a framework of access to genetic resources and benefit sharing with the requirement of disclosure of the origin of the genetic resources belonging to a country as a sovereign right.[115] An example of such a trend is the Chinese Patent Law which prohibits patent for any invention and creation for which genetic resources are required and further requires the disclosure of both the direct and original sources of the genetic resources.[116] IP

113. See Chidi Oguamanam, (2011) Genetic Resources & Access and Benefit sharing; Politics, Prospects & opportunities for Canada after Nagoya", Journal of Environmental Law and Practice 87.
114. *Diamond v. Chakrabarty supra*, where the Supreme Court of United States held that "anything under the sun made by man" is patentable.
115. See the Convention on Brodiversity (CBD), The Bonn Guidelines on Access to Genetic Resources and Fair and Equitable sharing of the Benefit Arising out of their Utilisation, and the Nagoya Protocol on Access to Genetic Resources and Fair and Equitable Sharing of Benefit (ABS) Protocol of 30 October 2010. See text of Nagoya Protocol adopted at the COP-10, Nagoya Japan available online *http:/www.cbd.int/abs/doc/protocol/Nagoya-protocol-en.pdf* accessed 25 August 2012.
116. See Article 44, Chinese Patent Law. See Horoko Yamane, INTERRETING TRIPS, GLOBALISATION OF IPR AND ACCESS TO MEDICINES, Hart Publishing, 2011, 379 – 384. Yamane posits that the Article 44 prohibition was largely inspired by the CBD framework for access to genetic resources.

expansion must, therefore, be circumscribed by an equitable and public-regarding consideration for the sustenance of TK and its bio-cultural component under appropriate IP system.[117] The appropriate IP regimes for our purposes, include neighbouring rights for TK and cultural expressions, certification and collective marks, utility models, geographical indication (GI), farmers' right, plant breeders' right and patent, among others.

Standard of Intellectual Property Rights Protection

The shifting standards of IPR protection and enforcement have become a subject of grave concern that borders on economic growth and development. Recent studies have shown that a continuously higher standard of IPR eats into public welfare space and may hinder innovation and development that are unintended ab-initio by the protection. According to the Report of the UK Commission on Intellectual Property Rights:

> "The conferring of IP rights is an instrument of public policy which should be designed so that the benefit to society outweighs the cost to society…We believe policy makers need to consider the available evidence, imperfect as it may be, before further extending IP rights. Too often, interests of the 'producer' dominate in the evolution of IP policy and those of the ultimate consumer are either not heard or heeded…IP systems may, if we are not careful, introduce distortions that are detrimental to the interests of developing countries...Higher IP standards should not be pressed on developing countries without a

117. See Oguanaman, IP IN GLOBAL GOVERNANCE, A DEVELOPMENT QUESTION *supra*. See also the African Union Model Law on Rights of Local Communities, Farmers and Breeders, 2003.

> serious and objective assessment of their impact on development and poor people".[118]

Accordingly, the incremental incentive through the introduction of newer exclusive rights or extending their scope should balance the two sides of enclosure of private rights on the one hand and the access required under public interest on the other hand. The contiguity of the two extremes of enclosure and access relative to the socio-economic conditions, particularly for niche knowledge goods such as software and some creative products, to a large extent, determines the capacity of IP law to support the economy in promoting creativity and creating wealth. It will be counter-productive, for instance, considering the unhindered opportunities and availability of copyright works on the Internet to adopt copyright laws that make access unduly restrictive or even expensive.[119] A stronger standard of IPR does not necessarily yield positive result or the same result in every country. Hence, the strategic and appropriate formulation of IPR law and policy ought to be guided by the context of a given level and goals of development.[120] Perhaps, the prevailing tension over the one-size-fits-all concept in its various manifestations that implicate the overall breath of IPR standard is justifiable, even in the manifest commonality of IPR "where

118. See Integrating Intellectual Property Rights and Development Policy, Report of the Commission on IPR, London, September 2002, 3.
119. See Development in the Information Age, Issues in the Regulation of Intellectual Property Rights, Computer Software and Electronic Commerce, ICTSD –UNCTAD Issues Paper No. 9, Ruth Okediji, 2004, 3.
120. See Indicators of the Relative Importance of IPRs in Developing Countries UNCTAD-ICTSD Project on IPRs and Sustainable Development, Issue Paper No 3, Sanjaya Lall, 2003. The study examines the impact of stronger IPRs on developing countries; it classifies countries based on IPR relevance in terms of "technological activity, industrial performance and technology import, and concludes that countries will experience different outcomes from strengthening IPR, not only at different levels of development but also at a similar level of income depending on their pattern of technology development and imports", Forward, V.

the major forms of protection are converging".[121] It underscores the need to define a policy space for alternatives, not necessarily conflicting, flexibilities and exceptions to IPR monopoly. For example, the rules of limitations and exceptions have helped moderate could amount to a hyper copyright situation by allowing access to works in order to advance research, education and uses in fair dealing with the works. The same objective would raise the issue whether indeed the term of copyright is not too long requiring a review, especially in the context of the encroaching digital and online media. According to James Boyle:

> "But once one adds the Internet to the equation, it becomes possible to imagine digitising substantial parts of the national heritage as it emerges into the public domain, and making it available to the world. Now this is truly fulfilling the goals of copyright: encouraging access. It has positive effects on education, on development and on creativity. Instead, the process of international 'harmonisation' grinds on relentlessly extending copyright terms retrospectively, locking up cultural and educational materials that could and should be available to the world. The loss caused by copyright have rivals and exceeds only possible loss from "piracy", yet one will listen in vain for this

121. Graeme Dinwoodie, Remarks: One- size- fit- all Consideration and Difference in IP Law in THE STRUCTURE OF INTELLECTUAL PROPERTY LAW Can One Size Fit ALL? Annette Kur and Vytautas Mizaras (ed): *supra*. See also Laurence Heifer and Graeme Austine: HUMAN RIGHTS AND IP, MAPPING THE GLOBAL INTERFACE, Cambridge, 2011, 35.

> loss to be mentioned in international debates on the subject".[122]

With regards to enforcement, there is no doubt that of the two types of enforcement of copyright, criminal enforcement has had more impact than civil enforcement by private litigation because the community of right owners largely depends on public IPR enforcement machinery in the institution, maintenance and possible conviction in the prosecution of piracy rather than civil litigation.[123] Enforcement, therefore, is part of the overall function and development of the law and jurisprudence in the field as much as law reform and policy formulation. Enforcing the protection against IPR violation cannot be discounted at the expense of law reform that is not as dynamic for other reasons. The standards of IPR protection and enforcement need to be constructively reviewed in the light of prevailing realities and the future development of the law. This leads us to the topical issue of IPR in the digital environment, an important consideration in the reform of IP law and policy.

Intellectual Property Rights in the Digital Environment

122. James Boyle, [2004]: A Manifesto on WIPO and the Future of Intellectual Property, Duke Law and Technology Review No. 9, 6.
123. Enforcement of the various forms of IPR in the courts is gradually increasing in interest and commercial importance. Trademark leads the pack, followed by copyright and then patents. However, the inadequacy of the law and enforcement mechanism constitutes two of the numerous problems of enforcement of IPR. In the copyright sphere, there is a heavy reliance on criminal enforcement by right-holders which accounts for the scanty jurisprudence in this area. In trademark litigation, substantive decisions that would have helped the development of the law are usually aborted by the interlocutory reliefs with very few cases determining recondite point of law. However, the recent Supreme Court decision in *Ferodo v. Ibeto* (2004) 5 NWLR (PT 866) 317 has engaged critical scholarship on the role of the court in the interpretation of IPR law in Nigeria. See Helen Chuma-Okoro (2011) Supreme Court decision in Ferodo Ltd .v. Ibeto Industry Ltd: A Review, (NJIP) Maiden Edition, 219 and also Ayoyemi Lawal Arowolo (2012) *Ferodo Ltd and Ferodo Nig. Ltd .v. Ibeto Industries*: Another Critical Review, [NJIP] Vol. 1, No.2, 118.

Technological advancements have had serious impact on intellectual property regime, such that it has become necessary to put in place a mechanism for regular reviews of existing laws and establishing new norms to accommodate technological changes in the society. Much of this has been witnessed at the international level where there have been a number of treaties adopted to deal with issues arising from the use of new technologies.[124] Digital technology with its attendant Internet revolution presents one of the most difficult problems, indeed the latest manifestation of intellectual property's continued crises,[125] and a special one in framing IP law and policy for the 21st century. With digital and online media, copyright works are freely accessible, malleable and transferable at a speed hitrto unknown in the history of copyright use, thereby tampering with the structure of copyright law in relation to the copyright owner's control vis-à-vis exploitation of his works. The early manifestation of this problem has cost the global entertainment and media industry huge resources in trillions of dollars resulting from digital copyright abuses compelling national and international solutions.[126] The law introduced additional standards of protection, covering computer programmes, databases, and applicable exclusive rights in the digital

123. A good example of new treaty dictated by technological advancement is the case of the WIPO Digital Agenda Treaties i.e. the WIPO Copyright Treaty, and the WIPO Phonogram and Performances Treaty both of which were adopted in December 1996. The main purpose of the treaty is to clarify provisions of existing treaties in respect of copyright, as they are applicable in the digital environment. Nigerian has initialled these treaties, but no formal ratification has been done.

125. D. Vaver *supra* at 630.

126. See US, Digital Millennium Copyright Act [DMCA) 1981, Pub. L. No. 105-304, 112 stat. 2860 which, inter alia, regulates the circumvention of technological protection measures against copyright infringement. See also EC's Directive on Copyright in the information society 2001 (infosoc directive) incorporated into member's copyright laws Treaty and WIPO Performers & Phonograms Treaty both referred to WIPO Internet Treaties 1996 and products of WIPO's Digital Agenda seek to regulate and streamline existing rights of authors and performers in the digital and online environment.

environment such as the reproduction rights, distribution rights, right of communication to the public and right of making available works on the internet and similar networks.[127] With the capture of the most fundamental right of copyright to "reproduce the work in any material form" in the digital highway, the loss by the entire content industry can only be imagined.[128] Napster and other cases in different jurisdictions were quick to remind the entire copyright-based industries all over the world of the challenges as well as the opportunities of the digital media to content producers and users alike.[129] Copyright law easily becomes the natural legal domain for the entire content industry in the music, movie, publishing, software, telecommunication, services and other industries, including education particularly in Nigeria of today.[130] The capacity to measure the new technological subject matter against the new technological use is the twin key imperatives in any copyright law making for the digital environment.[131] Copyright law is then able to envision the function of that technology, thus making the law pragmatic and proactive in its operation.[132]

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127. See generally Silke Von Lewinski: INTERNATIONAL COPYRIGHT LAW AND POLICY, Oxford, 2008, 427 -496
128. See Jessica Litman: DIGITAL COPYRIGHT, Prometheus Books, 2006, 176-177: See also Paul Goldstein, COPYRIGHT HIGHWAY FROM GUTENBERG TO THE CELESTIAL JUKEBOX, Standford Univ. Press, 2003, 187 – 216.
129. *A & M Records .v. Napster* 239 F. 3rd 1004 (9th Cir. 2001*); CBS Songs .v. Amstrad Consumer Electronics [1988] AC 1013; Sony Computer Equipment .v. Owen* [2002] ECDR298. The digital share of world music revenue increased to 29% in 2010 from 10% in 2006, ahead of other entertainment sectors reported in BPI Yearbook 2001, Recorded Music in the UK: Facts, Figures and Analyses, 87.
130. See Adejoke Oyewunmi (2011): The Education Sector and Copyright Issues in the Digital Age: A Perspective from Africa in INDIVIDUALISM AND COLLECTIVENESS IN INTELLETUAL PROPERTY LAW, Jan Rosen (Ed.) ATRIP Intellectual Property, EE, 2012, 339.
131. See Paul Goldstein supra at 188.
132. WR Cornish divides the technological solution into two aspects, namely the Technology of Legitimate Access and Technology of Policing. See WR

It is evident that the existing framework of rights under copyright does not fit into the digital and online environment. This explains recent approaches in streamlining existing copyright framework in terms of the exclusive rights, anti-circumvention measures and protection of rights management system with the digital and online environment. The newer 'right of making available' conceded by copyright now appears to satisfy the demands of digital environment which hitherto was lacking in the traditional exclusive rights of reproduction, performance, distribution and communication.[133] The existing copyright framework which makes it difficult if not impossible for copyright and media lawyers in Nigeria to enforce a variety of digital and online-based actions that are now prevalent in the content industry requires an urgent revision. The reproduction right which, for instance, involves the making of copies of various copyright protected works are restricted to the physical media and hardly available in the digitally empowered market place. I have submitted elsewhere that "the general and specific models for exclusive rights, be it reproduction, distribution,

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Cornish, INTELLECTUAL PROPERTY, Omnipotent, Distracting Irrelevant, Clarendon Law Lectures, Oxford Univ. Press, 2004, 54-55. The "graduated response" describes the policing technique contemplated by WR Cornish in his treatise which refers to a new alternative mechanism (or improved ISP cooperation) as a new enforcement system to address Internet piracy beyond the traditional notice and take down approach. It involves an enforceable escalation of online warning notices in concert with service provider targeted at the infringer and culminating in the termination of service as can be provided for in a statute. For instance, see the French HADOPI (High Authority for the Diffusions of Works ("Oeuvres" in French) and the protection of rights on the Internet Law No. 2009-669, June 12 2009. See an examination of the new graduated response in Allain Strowel (2009), Internet Piracy as a Wake-up Call for Copyright Law Makers- Is the "Graduated Response" a Good Reply? WIPO. J, No. 1

133. See Articles 10 and 14 respectively of WCT and WPPT. For a detailed review of the t right of making available as applicable to copyright works in a variety of scenarios, See Jane S. Ginsburg, The (new?) right of making available to the public, in INTELLECTUAL PROPERTY IN THE NEW MILLENNIUM, Essays in Honour of William R. Cornish, David Vaver & Lionel Bentley (Ed.), Cambridge, 2004, 16.

broadcast or communication to the public in relation to virtually all the protected works of copyright remain the cornerstone of copyright protection today but have been endangered in the current digital environment".[134] To benefit from the opportunities presented at the digital marketplace, copyright and the rights in domain names in trademark should be incorporated into the new IPR law.

While the market for physical optical discs still exists, and may remain so though for a short while, the business model and the actual economic power of the new creative content reside in the digital market. The traditional theatre of the war against piracy, being fought on the streets of Alaba, Onitsha, and other parts of the country and more currently against replicating plants which churn out optical discs into distribution channels, is rapidly giving way to the new digital market occasioned by large scale digital downloads and other online activities that have offered new opportunities and platforms for creators to produce and disseminate creative products to consumers.[135] The phenomenal rise in the digital market has forced a paradigm shift in entertainment business and practice with respect to the existing platforms of production and distribution (including import and export) which to be gradually breaking in the face of

134. See Adebambo Adewopo, NIGERIAN COPYRIGHT SYSTEM Principles and Perspectives supra 205 – 207, citing the Court of Appeal decision in the treatment of each rebroadcast of the respondent's programmes and channels as 'an infringing copy' support a finding of infringement of broadcast right in *Ubi Bassey Eno .v. NCC* Unreported suit No CA/C/6/2007 delivered on 23rd April 2009 as a weak attempt to enforce digital copyright under a law that is essentially governs a physical domain.

135. See Nigerian Media & Entertainment Industry, the Next Frontier, Making Steady Progress Fountainhead Research, Nov. 2008. The study asserts that "The future of the Media & Entertainment [M & E] industry in Nigeria indicates the prevalence of digital media as a tool for distribution, delivery of creative content and a more personalised and interactive experience of [E & E] as media converges with technology", 10. See also Survey of Copyright Piracy in Nigeria, Nigerian Copyright Commission & The Ford Foundation, June 2008. See the Copyright (Optical Discs Plants) Regulation 2006 which regulates the production of optical discs.

the virtual reality that has permeated our shores as depicted by the increasing prominence of the Nigerian media and entertainment industry. This development requires a sound copyright law and a well focussed enforcement strategy to reflect the current dynamics that rely on the copyright system.[136] As a developing country, our IPR enforcement strategy, should reflect current concerns such the empirical analyses or impact assessment of IPR violations or the existence and scope of the market for offences, IPR enforcement capacities relative to the general law enforcement as well public-private funding of enforcement.[137]

Intellectual Property Rights Administration

Administration is very central to the effective workings of an IPR system. It entails three important components. In the first place, it involves the enactment of the law to govern the subject matter of IPRs. Secondly, it readily involves the legal and institutional framework established for the realisation of the goals of the enabling IPR laws. Hence, an effective IP regime not only requires the enactment of an adequate IP law(s) but also the full complement of the regulatory institution or governance mechanism that is saddled with the responsibility for the administration and enforcement of the law including the regulation and control of IPRs.[138] Those two components simply suggest the idea of regulatory coverage, not necessarily an

136. See Nigerian Media & Entertainment Industry Report (supra) indicates that the industry is worth over N5 trillion, generates a revenue of over N500 billion annually while Nollywood employs over a million people and is estimated to be worth over N300 billion, 28.

137. See also Fink: C (2009) Enforcing IPR: Economic Perspectives in ICTSD [2009]. The Global Debate on the Enforcement of Intellectual Property Rights and Developing Countries, ICTSD IPRs and Sustainable Development Programme, Issue Paper No. 22, International Centre for Trade & Sustainable Development, Geneva, Switzerland.

138. See Adebambo Adewopo, The Gain is More Than the Pain: Cost-Benefit Perspective of the Regulation and Control of Copyright-Based Industries in Nigeria, presented at the 26th International Symposium on Economic Crimes, Jesus College, University of Cambridge, 31st August – 7th September 2008. Unpublished Paper on file with author.

effective regulatory regime. However, the third component entails the quality of the supporting regulatory institution and the capacity for pro-active response to emerging challenges with respect to issues that fall within the statutory mandate of the regulatory institution.[139] The third component, therefore, deals with the existence of a regulatory regime in which a pro-development IPR system is being envisioned. The Nigerian Copyright Commission and the Trademark and Patent Registry are the two principal offices or institutions responsible for the administration of copyright and industrial property, respectively in Nigeria, although there are other agencies of relative significance in that regard.[140]

Recent reform initiative has raised the issues of the harmonisation of IPR administration as a model for the development of IPR in Nigeria. The first approach contained in the Draft Industrial Property Bill 1991 proposed the establishment of the Industrial Property Office for the administration of Trademark, Patent, Design and newer subject matters and associated rights such as service marks, certification marks, collective marks and utility models.[141] The second approach which I have been associated with is the harmonisation of the entire IPR administration for a more focussed and better co-ordinated IPR system under a unified institutional framework. This is tenable on several grounds that suggest that there is no mandatory rule of the thumb for a particular model more than the need to evolve a model of IPR

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139. See Adebambo Adewopo (2011) Intellectual Property Regime and the Global Financial Crisis: Lessons from Nigeria, Journal of Money Laundering Control Vol. 14, No.2, 183, 184 citing Jalilian: Kirkpatrick and Parker (2007) Impact of Regulating Economic Growth in Developing Countries: A Cross-Country Analysis, available at http/dspace.lib.cranfield.ac.uk/bitstream/1826/1455/11impact %200f%20regulation.Economic&20gr.
139. The National Office for Technology Acquisition & Promotion (NOTAP) is responsible for the registration of transfer of technology agreement pursuant to the NOTAP Act 1979 as amended.
141. See Adebambo Adewopo & Chidi Oguamanam (1999) *supra* 640-641.

administration that better serves the domestic conditions and the objectives of IPR particularly in a developing country like Nigeria that is still grappling with the multifaceted challenges of development. A comparative survey of IP administration in different countries shows a variety of structural arrangements, ranging from the division of administration between copyright and industrial property offices under the same as well as across different ministries or departments. While countries like Kenya, USA, Australia, Brazil, China, Egypt, France and others have separate divisions of copyright and industrial property, others like Canada [Industry], Ghana [Justice] Luxemburg [Commerce], New Zealand [Economic Development], Russia [Federal Service for Intellectual Property], South Africa [Trade and Industry], Trinidad and Tobago (Legal Affairs], Zimbabwe [Justice], Thailand [Commerce], UK [Intellectual Property Office] maintain IP administration under a central superintending department or ministry.[142]

The fragmentation of IPR administration under different agencies, departments and ministries since the coming into force of successive IP legislations came about more by incidence of history than by a deliberate design to institute a framework that has not worked effectively for the development of IP. Rather, it has proved difficult to reform due largely to the lack of effective coordination, service and political will that is fuelled more by the fragmentation than by a need for a uniform administrative system. Apart from helping to achieve systemic cohesiveness and coordination in the formulation and implementation of IPR policies, including a better focussed conduct of international aspects of IPR, a uniform administrative machinery will also help reduce the cost of administration that hitherto required funding multiple agencies existing on related fields of IPR, particularly at a time when efforts are geared towards reducing the cost of governance. To help further strengthen a uniform IPR administrative system, an interagency coordination

142. See *www.wipo.int/directory/en/urls.jsp*.

mechanism may be established to engender other relevant sectoral and policy thrusts in IPR administration since IP is multidisciplinary in nature and affects the country's creative and industrial sectors in different ways.[143] The centrality of the interagency co-ordination lies in its role in providing the effective support for the administration of IP law and policy and assists in the maintenance of coherent negotiating positions in relevant regional and multilateral fora, including WIPO, WTO, WHO, UNCTAD and UNESCO. This system has proved effective in the developing countries that have made remarkable progress in maintaining autonomous IP policies and positions, particularly India and Brazil despite the pressures from foreign governments on IPR related matters. The most singular project of the new IP agency with the constitutive support of the interagency co-ordinating committee should embark on the formulation of a National IP Strategy that would reflect the cardinal objectives, principles, functions and the structure of all the IPRs in the context of the objective socio-economic and industrial development of the country.

Lastly, in view of the growing significance of regional IP regime within the international IP system, it is important for Nigeria to assume active role at the regional and sub-regional IP governance structure, within the existing Anglophone IP organisation, namely the African Intellectual Property Organisation (ARIPO) and Economic Community of West African States (ECOWAS) respectively.[144] Within the context

143. Notable scholars and policy makers have given the nod to this interagency support structure. See Jerome Reichman, Jayashare Watal & Ruth Gana Okediji, Flagship project on Innovation, Cultural Biogenetic Resources & Traditional Knowledge UNDP [2000] cited in Jerome Reichman (2009), Intellectual Property in the Twenty-first century: Will the Developing Countries Lead or Follow? 46 Houston Law Review 1115, 1159.

144. The African Regional Intellectual Property Organisation (ARIPO) based in Harare, Zimbabwe established a regional framework for the protection of IPR among the 15 Anglo-phone African countries. See Adebambo Adewopo (2003) Trademarks Systems in Africa A Proposal for the Harmonisation of ARIPO and OAPI Agreements on Marks, 6 J. W. I. P. 3, 473.

of ECOWAS, Professor Chidi Oguamanam and I in 1999 made a case for the establishment of an ECOWAS Trademark System to support the Community's trade policy framework in particular reference to the movement of goods and services across the region. That proposal, in our view, would help promote innovation in trade, competitiveness and effective branding and overall economic growth, which has come into reckoning, with regards to the feasibility study of specialised protection for niche sectors like textile and leather products within and outside the region.[145] In another work, I proposed a reciprocal system of trademark registration system that will integrate the separately existing trademark system under the ARIPO and OAPI frameworks in order to establish an Africa-wide protection, which is not otherwise covered by the two separate frameworks.[146] It has been contended, and rightly in my view, that a regional approach in relation to the global IPR standards, for example, to the use of TRIPS flexibilities, will enable countries in the same region or sub-region to share resources and information for their common strategic interests.[147]

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145. See Adebambo Adewopo & Chidi Oguamanam *supra* 632, 650. See also the ongoing study under the Open African Innovation Research Training: Exploring the Role of Intellectual Property in Open Development [Open Air Project] under the auspices of IDRC and GIZ, Adebambo Adewopo, Joke Oyewunmi & Helen Chuma-Okoro: Feasibility of the Use of Collective Marks and Certification Marks by small scale manufacturers of textile and leather products in Nigeria and Ghana, 2012 Unpublished manuscript. Copy on file with the author.
146. For a more detailed examination of the framework of ARIPO and OAPI for Franco-phone Africa, see Adebambo Adewopo (2003) Trademarks Systems in Africa A Proposal for the Harmonisation of ARIPO and OAPI Agreements on Marks, op cit 474. In the article, I proposed a reciprocal arrangement between ARIPO and OAPI under which the two organisations will extend protection to trademark registered under either of them without necessarily registering under both in order to protect trademark of goods and services in all the member countries of both organisations, thereby an Africa-wide trademark protection.
147. This forms part of the four strategies for intellectual property coalition for development [IPC4D], the others are South-Alliances, North-South

In rounding off on this part, permit me, Mr Director-General, to briefly touch upon an important but controversial area in copyright administration, especially in Nigeria. This is collective management of rights in copyright law and practice. Evidently, the domain of collective management in copyright is one of the most contested areas in the copyright system in many jurisdictions that are evolving a system of collective management. I will mention two aspects of collective management that I believe may continue to pose some challenges barring a review of existing regulatory framework, although copyright experts can proffer a formidable legal solution in the circumstance. The first is the issue of number of Collective Management Organisation (CMO). From recent experiences, I must say that the issue is no longer an academic one at least in Nigeria. To a large extent, the current situation has by far made far reaching changes in the annals of collective management in Nigeria. However, the existing legal framework appears ambivalent and has helped to nurture a crisis of context in the definition of the law. While a single CMO is desirable in practical terms for certainty in the clearing and actual management of rights, the Act provides that another society may be approved only in the event that the Commission (NCC) is satisfied that an existing approved society has failed to adequately represent the interests of that class of copyright owners[148]. In other words, while the primary objective of the Act is to establish one CMO in a particular class, more than one CMO is permissible under a default circumstance. Therefore, with regards to the ultimate intendment of the Act, more than one CMO is contemplated in the event of failure of adequate representation of the interests of copyright owners in question. From my experience as a copyright administrator, this

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Cooperation and joint participation in WTO. See Peter K. Yu, Building Intellectual Property Coalitions for Development, Working Paper No. 37, September 2008, The Centre for Internal Governance Innovation. Available online at *www.cigionline.org*.

148. See section 39(3) Copyright Act, LFN 2004.

ambivalent provision has inadvertently engendered intractable crises in the evolution of a viable collective management system in this country, a scenario that has dodged collective management of rights in the music industry.

The second issue of concern flows from the actual operation of a single collective management organisation (CMO) under the provision cited. And that is the question of the legal status of management of the rights not expressly assigned to the CMO by the right owner or owners as the case may be. This is again not academic considering the excuses often deployed by right users to evade their legal obligation under copyright law which in some instances is tied to the amount of royalty payable by the user. The notion of blanket licence is at best a defence only valid in custom but not in law, simply because no agency can validly operate in law in the absence of express legal authority or instrument for that purpose. The amount of royalty payable ordinarily not present a special problem considering that its determination is subject to tarrifs which in best practice, ought to be negotiated and fixed by consensus between the concerned parties, failure of which may be referred for regulatory resolution.[149] It is my considered view that the current reform exercise should clearly address these two key areas in order to infuse more stability and sustainability into the law regulating collective management of copyright. There is no doubt that a viable collective management system holds the key to the effective functioning of a copyright system and the realisation of the objectives for copyright protection itself, particularly in terms of generating revenue and creating wealth for overall economic growth.

CONCLUDING REMARKS

149. See the Copyright (Collective Management Organisations) Regulations 2007, Part III.

In this lecture, I laid the theoretical justifications for IPR protection as the foundation for the discussion of the significance and development of IP which, I discussed both from the national and international perspectives, particularly against the current development imperative that is critical to developing countries such as Nigeria. I established that both the doctrinal and pragmatic foundations of the Nigerian IP law and governance are of limited impact on development and jurisprudence. I argued that this trend is unsustainable on account of contemporary socio-economic realities. Consequently, I offered a template on which a development-focussed IPR model can be fashioned in the context of IP law and policy reform. This template seeks to construct the basic framework for IPR protection that will support creativity and innovation in a rapidly changing world, hence the use of the theme of a pro-development vision of the law. There is no doubt that a sound and well coordinated national IP system that the BRIC[150] emerging economies like Brazil and India are spearheading is instructive for development. Nigeria's transition from its present status of a 'frontier economy' to an emerging economy in the BRIC group lies in its strategic mainstreaming and the reform of its IPR laws for development in the current globally empowered knowledge order. It is obvious that Nigeria has not reached the level of 'active decision-making' in the 100 years of its IP regime,[151] but is still in the selective stage of passiveness characterised by inconsistency in IP policy and law reform. It can, however, take a quantum leap towards the institution of a national IP strategy within the defined developmental agenda to secure, at this critical time of global knowledge competitiveness, a pride of place for the future. That future lies here – in the wealth of the nation that is richly

150. *Supra* note 6.

151. See Handong Wu: One Hundred Years of Progress, The Development of IP System in India [2009] WIPO J, No. 1 2009, where the writer divided China's century history of IP law into four stages, namely, passive acceptance, selective arrangement, modulated application and active decision making.

endowed in its vast human resources waiting to be effectively harnessed.

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The Director-General, Sir, my journey began about 21 years ago, when, like a twinkle in the horizon, I sought an academic career that has taken me everywhere and accompanied by, and sometimes carried in the tall shoulders of many people who I will like to mention tonight. It began through the 'conspiracy' as it were of Professors Yerokun, Jadesola Akande of blessed memory who was at the time the Vice-Chancellor of the Lagos State University (LASU) and my late father, who all saw to my recruitment into the Faculty of Law Lagos State University. As a young law student, l have never been in doubt about my deep interest in academics. It was, therefore, not a difficult decision to leave the corporate world to resume in LASU when it was not particularly fashionable to be a lecturer or teacher, particularly to settle for one-seventh of my salary to the disappointment of my boss then at Hogg Robinson Nigeria. But that was the best decision of my career path. It was the turn of Professor Osunbor, who as the Dean of Law, directed me to teach intellectual property law, a new course for the first time at the faulty. I recall asking him what that was about, to which he replied in his characteristic emphatic tone "Adewopo, that is your job to find out". That singular act ignited my academic career in the field of intellectual property law. For assistance, I quickly turned to Professor Egerton Uvieghara who then was serving at the Nigerian Law Reform Commission, chaired the drafting of the Copyright Act and served as the pioneer chairman of the Governing Council of the Nigerian Copyright Commission where I would 12 years later serve as its fourth Director-General. This Institute's library then provided the residence for my new found research subject. In a providential sense, to these three eminent professors, Yerokun, Osunbor and Uvieghara, l owe my foray into this esoteric field that has come to define my entire academic career of two decades.

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I thank everyone here present tonight.

Mr. Director-General Sir, this is my Inaugural Lecture!

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