

## INTELLECTUAL PROPERTY AND SUSTAINABILITY OF GLOBAL DEVELOPMENT PROCESSES IN NIGERIA\*

### Abstract

*Intellectual property refers to creations of the mind, and intellect such as inventions, literary and artistic works and images used in commerce and other innovative ventures. Typical examples of Intellectual Property include author's copy right, logo designs of products, websites or patents on processes of manufacturer. It is in fact a category of property that includes intangible creations of the human intellectual, and there have strong impacts on economic growth. The World is craving for sustainable development – a development that meets the needs of the present without frustrating future generations in meeting their own needs. These needs are specifically economic, social and environmental in nature and there is no doubt that Intellectual Property and its protection plays a pivotal role in sustainable development. This paper seeks to appraise the importance of Intellectual Property and the laws governing it in Sustainable Development. Recommendations as to the way forward shall be also proffered.*

**Keywords:** Intellectual property, Global development, Sustainability, Nigeria

### 1. Introduction

Intellectual Property being intangible, and of the intellect, requires more protection than other fields in human endeavour. The protection is for inventions, literary and artistic works, symbols, names, and images created by the mind, using patents, trademarks, trade secrets and copyrights. Globally development looks at indicators such as per capital annual income. While developed nations are said to have per capital annual incomes of more than \$2000 (2 thousand U.S Dollars) and consequently higher standards of living than developing nations with less than \$2000. It is obvious that development whether social, technological or Industrial takes its not from economic growth, which main indicators are, but not limited to rate of poverty, illiteracy rate in adults, life expectancy, peace and freedom. Sustainable Development is a development that is self-subsisting, and amenable to being maintained. This paper looks at the importance of Intellectual Property in Sustainable development, and the grounds covered by the IP laws in maintaining the pivotal role of IP in Sustainable development.

### 2. Conceptual Framework

#### Intellectual Property

According to the World Intellectual Property Organization,<sup>1</sup> Intellectual Property is a set of property that include intangible creations of the human intellect and the rights given to persons over the creations of minds which give the creator an exclusive right over the use of his/her creation for a certain period of time.<sup>2</sup> The term intellectual property gained ground in the 19th century but only became popular in global<sup>3</sup> legal systems in the 20th century. The various types of intellectual property include copyrights, patents, trademarks and trade secrets industrial designs, models software, data base rights etc. Intellectual property is an asset, a creation of the mind, a unique ingenuity belonging to the owner, who is like a creator. There are two broad classes of intellectual property, namely; Copyright is concerned with protection Literary, musical and artistic creations whilst industrial property is concerned with protection of trademarks, industrial designs, patents, models, plants and animal varieties etc. The rights given under intellectual property are usually protected to ensure that these rights enable the owner or the authorized person to have to themselves the economic and proprietary value of the assets and to be able to alienate same. The intangible nature of intellectual property presents a questionable situation as a large number of people can 'Consume' an intellectual good without it being depleted and at the same time, most of the works emanating from intellectual property can be perceived, heard, felt and understood. These reasons make it necessary for Intellectual Property to be protected by law to create a intellectual goods giving people and business rights<sup>4</sup> to the intellectual goods they create usually for a time certain. Intellectual Property protection is inevitable for promoting innovations without which individuals and businesses would not gain full benefits of their inventions and this would in turn hamper the incidence of research and development.

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<sup>1</sup>World Intellectual Property Organization (WIPO)(2016) Understanding Industrial Property <https://www.wipo.int/publications/en/details.j5p?id=4080>.accessed 12/3/2022

<sup>2</sup> World Trade Organization, TRIPS: WHAT ARE IPRS. @<https://www.wto.org/english/tratop-e/trips-e/intel1-e.htm> accessed 12/3/2022

<sup>3</sup> Somadina E.Okorie; *The Guardian* ' 29th September 2020.

<sup>4</sup> *Oxford Advanced Learners Dictionary*, Oxford University Press, 10th Ed. 2020.

Intellectual property can enhance a Company's value, market a company's product and services and also obtain finances for a business. In effect Intellectual property ordinarily is property resulting from creativity. It means an idea, or design that someone has created and the law prevents other people from copying.

In Nigeria, there are three principal statutes which govern intellectual property viz:

- a) Copyright Act<sup>5</sup>: This protects the rights of creators in such works as literary works, artistic works, musical works, cinematograph films, sound recording and broadcasts.
- b) Trade Marks Act<sup>6</sup>: This regulates trademarks which comprise any mark, sign, symbol, label, device, letter, numeral etc or a combination of such items which is used by manufacturers or marketers to identify their products or differentiate them from other manufacturer's products.
- c) Patents and Designs Act<sup>7</sup>: This protects inventions that extend to things like machines, devices, chemical compositions and manufacturing processes which come under patents as well as unique designs of such machines, devices or industrial processes which come under Industrial designs.

It is quite regrettable that despite the evolution and increasing growth in the digital era, Nigerian IP laws are still obsolete and greatly lag behind with regards to protection of works in the digital environment. Apart from computer programmes which are protected as part of literary works, there is no specific protection for such IP products as trade secrets, service marks, softwares, databases and other digital IP products under Nigerian law. Again, the Nigerian Trademarks Act only protects marks associated with goods of manufacturer and does not extend protection to service marks which are protected in many other jurisdictions. In other words, marks employed by proprietor of businesses in the service industry such as banks, restaurants, communication Industry etc are left unprotected by the statute. This is a major shortcoming in the legal framework which ought to be promptly addressed. Mention must also be made of the existence of some international legal instruments on Intellectual Property Protection many of which Nigeria is a party to such as Universal Copyright Convention (UCC), the Berne Convention for the protection of Literary and Artistic works 1886, the Paris Convention for the protection of Industrial Property 1883, the Patents Cooperation Treaty 1970 which provides for unified procedure for filing patents applications, the African Regional Intellectual Property Organisation (ARIPO) 1976 and the Harare and Bajil protocols established to foster co-operation amongst African states in Patent and other IP matters, the WIPO Copyright Treaty (WCT) and WIPO producers of Phonograms Treaty (WPPT) 1996 both of which, inter alia provide for harmonization and standardization in IP laws of member states<sup>8</sup> as well as the Agreement on Trade related Aspects of Intellectual Property (TRIPS) which was reached under the auspices of the World Trade Organization (WTO) to address IP issues that arise in trade negotiations and agreements between member states.

### **Sustainable Development**

To explain the concept 'Sustainable Development' it is pertinent to peep at 'development'. To develop is to cause something to expand, or bring out the potentialities, capabilities, or cause to come to completeness.<sup>9</sup> In the global economic parlance, Developed nations are said to have per capital annual incomes of \$2000 (two thousand US Dollars) and the indicator is higher standard of living as against developing countries with per capital annual incomes of less than \$2000 where there is commensurate poor standard of living as succinctly manifest in Nigeria. It is evident from the above that development whether industrial, technological, social and whether personal or group is indicated by economic growth which is one of the cardinal points in sustainable development. Taken together with 'Sustain', which means endure without yielding, to withstand<sup>10</sup>, Sustainable Development ordinarily would be construed to mean an expansion or coming to completeness which endures without yielding. It is a growth that is self-subsisting, maintained and capable of being kept going. It is the process of positively transforming the society with some of the key indicators being rate of poverty, peace, life expectancy, adult illiteracy and freedom among others. At the end of 2015, marking the end of the life span of the millennium Development Goals which could not adequately achieve its objective of eradication of poverty, the United Nations under the leadership of Ban Ki-Moon (the then Secretary) projected a process of 15 years developmental agenda with World leaders and officially declared the 17 Sustainable Development to combat poverty, Disease, illiteracy, hunger, environmental degradation and gender inequality. The core underlying factor was the impetus for global accountability in the use of the Earth's material and human resources for equitable development that is driven by

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<sup>5</sup> Cap C28 Laws of the Federation of Nigeria (LFN) 2004

<sup>6</sup> Cap T 23 LFN 2004

<sup>7</sup> Cap P 2. LFN 2004

<sup>8</sup> These International Instruments serve to provide a road map for future policy directions on IP matters across the globe.

<sup>9</sup> *New International Webster's Comprehensive Dictionary of the English Language: Encyclopedic Edition*. Typhoon Media Corporation, 2010 edition.

<sup>10</sup> *Ibid*

responsible environmental stewardship<sup>11</sup> This was captioned Agenda 2030 and was adopted by the member States in September 2015 as a blue print for peace and prosperity for the planet and its people now and the near foreseeable future. The United Nation's World commission on Environment and Development (UNWED) was then instituted and the commission in its Report brought forward a definition of Sustainable Development as a Development that Meets the Needs of the Generations without Compromising the Ability of future Generation to meet their one Needs. This definition of Sustainable development links economic development with responsible long-term stewardship of the environment and emphasizes intergenerational equity and accountability<sup>12</sup>. Sustainable development can conceptually be broken into three components – environmental, Economic and Socio-Political Sustainability making it an intersection between the environment, society and economy. In Sustainable development, the natural resources base is not allowed to deplete or deteriorate while serving the needs of the present times. It is an approach to development mindful of balancing societal, complex and competing needs against the turbulent societal economic, social and environmental limitations.

### 3. Intellectual Property and Sustainable Development

The key concepts in Sustainable development are Economic, Social and environmental development, from broad viewpoints, intellectual property relates to a number of aspects of a Country's social and economic development. Its impact can be felt in industrial, health, education, nutrition, biodiversity and cultural policies.<sup>13</sup> Intellectual property through its passive presence has touched all domains of knowledge like education, entertainment, media, art, technology, literature, music, and others<sup>14</sup> and these are all aspects of social development which have found sustainability through time. It is also amply clear that the level of benefits accruing from Intellectual property is proportional to a County's level of development achieved and the availability of skill-crafted labour.<sup>15</sup> Some of the benefits of Intellectual property are:

- It can help turn ideas into-money makers
- It can enhance business market value
- It can help one stand out from the competition
- It can be accessed to raise finances
- It can enhance opportunities to raise finances
- It can enhance opportunities related to experts in business<sup>16</sup>
- Creates and supports high paying jobs
- Tackles global challenges by break through solutions.
- Strong IP protects consumers and families.<sup>17</sup>

All these benefits go to economic development and its Sustainability. Environmentally, SDG 13 expresses the urgency in combating climate change and its impact. It is stipulated that US\$ 100 Billion by garnered to address this issue in the third World nations. The same requires the development and semination of green and environment- friendly technology. The International Patent classification committee developed an 'IPC Green Inventory' which helps technology in alternative energy production, conservation, nuclear power generation, transportation, waste management, agricultures, forestry as well as other design-related aspects<sup>18</sup>. The agenda laid under article 7 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) states that IPR shall "promote technological innovation and 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 balance of rights and obligations<sup>19</sup> . This has also been made possible and achievable by the IPC Green Inventory. The role of IP in meeting the SDGs cannot be over emphasized as the diffusion of technology provided by IP is a sine qua non in promoting the goals. IP can therefore not be related in isolation as it is dependent on many socio-political and economic factors which drive the achievement of the agenda 2030 on Sustainable development. Most importantly, as a specialized agency of the UN, the World Intellectual Property Organization (WIPO) contributes to the SDGs by providing concrete services to its member States, enabling them to use IP

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<sup>11</sup> Ikenna Onyido, 'The Role of Nigerian University Quest to Attain the Sustainable Development Goals in F. Anyogu, C. Eme, J. Ogbodo University-led knowledge and Innovation for Sustainable Development. Nnamdi Azikiwe University, *Book series on Sustainable Development series 1* 2021

<sup>12</sup> Ibid

<sup>13</sup><https://www.google.com/search?=intellectual+property+and+sustainable+development&09=dafs=chrome.0.69i59i450.1666922joj158sourceid=chro>

<sup>14</sup> Intellectual property and Sustainable Development Goals at [www.kashishworld.com](http://www.kashishworld.com)

<sup>15</sup> Ibid

<sup>16</sup> <https://bit.ly/317W2N4> accessed 26/3/2022

<sup>17</sup> <https://www.upcounsel.com/advanc>.....accessed 27/3/2022

<sup>18</sup><https://www.google.com/search?9=intellectual+propertyand+sustainable+development&09=&ags=chrome.0.69i59i450.1666922joj15&sourceid=chro>.....accessed 27/3/2022

<sup>19</sup> Ibid

system to drive innovation, competitiveness and creativity.<sup>20</sup> This achievement encompasses the realization of the three components of Sustainable Development; and forms the impetus to the achievement of Sustainability in social, economic and political spaces.

#### **4. Conclusion**

This paper has given an insight to the meaning of the concepts Intellectual Property and Sustainable Development. It also streamlined what is required for Sustainable development and how Intellectual property is important in the sustainability of global development agenda. In this regard, the intertwining of Intellectual property and Sustainable development answers such questions as;

- a. Supporting development of environmentally friendly technologies and the transfer of these solutions to developing motions.
- b. The contribution of Intellectual property in ensuring that the traditional knowledge of indigenous peoples is protected and that their social structures continue to exist.
- c. Intellectual property helping to avoid or minimize the adverse effects of climate change for future generation, and also the maintenance biodiversity of Flora and Fauna for future generations.

In all, the role of Intellectual Property in Sustainable development can never be over-emphasized. It is important therefore to extend Intellectual property protection to every endeavour that requires sustainability. It is recommended in this regard that the Lacuna in the Trade Marks Act concerning protection of service marks should be addressed. Of a fact is that Intellectual Property is governed by different statutes in Nigeria which have indeed become obsolete. It is thus recommended that all the statutes on Intellectual property should be harmonized and updated to provide for easy ascertainability and be in tune with modern trends.

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<sup>20</sup> <https://www.WIPO.Int.>5days>stoty> accessed 27/3/2022