

CONTRIBUTION OF INTELLECTUAL PROPERTY TO NIGERIAN ECONOMY – POLICIES FOR FUTURE GROWTH

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INTRODUCTION

Nigeria's economy has been described in the following terms:

“Nigeria is a middle income, mixed economy and emerging market, with expanding financial, service, communications, and entertainment sectors. It is ranked 30th (40th in 2005, 52nd in 2000), in the world in terms of GDP (PPP) as of 2012, and 2nd largest within Africa (behind South Africa), on track to becoming one of the 20 largest economies in the world by 2020. Its re-emergent, though currently underperforming, manufacturing sector is the third-largest on the continent, and produces a large proportion of goods and services for the West African region.”¹

“Although much has been made of its status as a major exporter of oil,Nigeria's anticipated revenue from petroleum is about \$52.2 billion (2012 GDP: \$451 billion). This accounts about 11% of official GDP figures (and drops to 8% when the informal economy is included in these calculations). Therefore, though the petroleum sector is important, it remains in fact a small part of the country's overall vibrant and diversified economy.”

It appears therefore that the economy is no longer all about oil, and it is now much diversified and on track to becoming the largest economy in Africa soon.

The financial newspaper “Businessday” however thinks the seeming health of our economy and seeming less dependence on oil, is illusory. In an article datelined 3rd June 2013, and published on the website of the newspaper, it warned about the dangers to the health of the economy posed by dwindling oil revenue due to stagnated production. The danger to the economy lies in the fact stated as follows:

“The oil and gas industry which makes up 15 percent of Nigeria's Gross Domestic Product (GDP), has an outsized impact on the economy, as it accounts for 70 percent of the FG budget and 90 percent of the nation's dollar earnings.”²

The implication of the fact that 70% of the Federal budgetary revenue and 90% of foreign exchange earning comes from the oil and gas sector is that the Federal government is earning relatively very little taxation revenue from other sectors of the economy and very

¹ http://en.wikipedia.org/wiki/Economy_of_Nigeria

² <http://businessdaynigeria.com/nigeria-faces-rude-awakening-oil-production-revenues-collapse>

little of whatever is being produced by other sectors of the economy is being exported for foreign exchange, at least through formal banking channels.

The purpose of this presentation is to identify the contribution, if any, made by Intellectual property to the growth of Nigerian economy so far, and how that contribution can be improved to lessen the budgetary dependence of the Federal government on revenue from the oil and gas sector of the economy.

CONTRIBUTION OF INTELLECTUAL PROPERTY TO THE ECONOMY

The expression, “Intellectual property” simply defined, refers to creations of the intellect. In other words, fruits of man’s ingenuity. These include inventions, literature, computer programs, music (written and recorded), art (in all its forms of expression), cinematograph film, industrial designs and trade marks.

Which of these different types of intellectual property has contributed significantly to the Nigerian economy? Which ought to be contributing but not yet contributing?

Cinematograph film

The Nigerian film industry, is universally acknowledged to have contributed significantly to the Nigerian economy in the past 10 years.

The industry, which is essentially a video film industry, is said to be worth between \$250 and \$500 million. It is ranked as the second largest film industry in the world in terms of numbers of annual film production.

Nigerian video films are in great demand in Nigeria and several African countries. They have also been reported to be in substantial demand amongst Africans in the diaspora. By some accounts. The industry is said to take in not less than \$107 million annually from exports.

Music

The Nigerian music scene had witnessed a tremendous change in terms of popular music in the past 5 to ten years.

Where previously, works of American artistes in the various popular music genres dominated radio air play and sales (both legitimate and pirated), now the works of Nigerian artistes predominate.

Where recording companies with international connection used to be dominant in the market, now they are all gone and only indigenous companies are operating in the market.

Sales figures are hard to come by but it is a well known fact that major Nigerian music artistes are performing all over Africa to packed arenas.

Computer programs

This industry is still in its infancy in Nigeria. The president of the Institute of Software Practitioners of Nigeria (IPSON) was however recently reported to say that Nigeria loses about \$1 billion annually to software importation, and that it is potentially a \$6 billion industry in Nigeria.³

This is therefore an intellectual property which can add to the growth of the Nigerian economy if appropriate policies to grow the industry are adopted and implemented.

Inventions

This is the intellectual property that affects the growth of the industrial and technology sectors of any economy. It is the key to economic growth.

The industrial revolution which took place in England between 1770 and 1850 and turned the economy of England, from an agricultural to an industrial economy was enabled by a wave of discoveries and inventions which took place at that time.

The revolution later spread to the rest of Europe and America. The resultant industrialisation of those countries laid the foundation for the wealth which those countries enjoy till today.

In the description of the Nigerian economy quoted at the beginning, the manufacturing sector of the economy is said to be underperforming. The underdevelopment of the power energy sector of the economy certainly has an adverse effect on the growth of the manufacturing sector, however, it is suggested that if there has been a steady supply of manufacturing industries, the sector would have done better than it has done so far.

CHALLENGES OF AND SOLUTIONS TO SUB-OPTIMAL CONTRIBUTION OF INTELLECTUAL PROPERTY TO THE NIGERIAN ECONOMY

Piracy of film and recorded music

The main challenge faced by the film and music industry, is piracy.

The Copyright Act 1988 as variously amended up till 1999 contains provisions designed to facilitate the enforcement of the right of owners of copyright in all works eligible for copyright protection in Nigeria. Therefore, copyright right owners in the cinematograph films, musical works and recorded music should have no ground to complain about the piracy of their works.

³ <http://www.thisdaylive.com/articles/Exploring-Nigerias-Untapped-Software-Industry/142752/>

It seems however that the problem of enforcement is really that right owners want to rely solely on the Copyright Commission for the protection of their intellectual property.

The reality however is that Nigeria is a very big country and the resources, both in manpower and material, of the Copyright Commission must be presumed to be limited. One would therefore surmise that the Commission simply does not have enough manpower or financial resources to police all markets and all street vendors in Nigeria selling pirated copies of recorded music and video films.

The right owners must take steps, themselves to enforce their rights, if piracy is to be kept within manageable limits. It must be accepted however that piracy of intellectual property cannot be totally eradicated. It could however be kept within limits as not to threaten the life of the industry.

On the other hand, experience shows that it may not be very viable for individual artistes or producers to litigate the infringement of their work. The expense of litigation and the time it takes for litigation to conclude can be extremely discouraging. This is more so when the source of the infringing material is not found but it is only the retailers that can be apprehended.

The more viable approach to anti-piracy action is for the association of right owners, if such exists, to undertake litigation on behalf of several right owners in a single action. In that way, the cost of litigation will be spread amongst all members and the benefit of a single court action will accrue to several members at the same time.

This was the strategy adopted by the International Federation of the Phonographic Industry (IFPI), when it undertook a copyright anti-piracy campaign in Nigeria between 1984 and 1990.

At that time, the Nigerian music scene was dominated by imported music of foreign international artistes. Therefore, the international recording companies, who owned the copyright in those recordings, had interest in bringing music piracy in Nigeria under control. Hence they caused IFPI, which is the association to which most international recording companies belonged to, to come into Nigeria and fund an anti-piracy campaign to clean up the piracy on the music scene.

It is believed that the anti-piracy campaign was successful. It is on record that several container-loads of pirated cassette tapes being imported from the Far East Asia into Nigeria were intercepted and seized by court orders at both Lagos port and Port Harcourt port during the period.

It would appear that the interest of IFPI in the Nigerian market ceased when the sale of the recorded music of Nigerian artistes started predominating in the market and legitimate sales of the music of international artistes was no longer substantial enough to justify the

continued expenditure of the foreign recording companies to protect the market from pirates.

Therefore, it is up to the owners of copyright in recorded music and cinematograph films and to supplement the anti-piracy action of the Copyright Commission by taking action through their association, to fund a sustained anti-piracy campaign. It is only by so doing that the market will finally be sanitized.

Inventions (Patents)

Inventiveness is encouraged by incentives.

The Nigerian patent system instituted by the Patents and Designs Act 1970 offers an incentive of its own for inventiveness. It guarantees for an inventor the right of exclusive exploitation of his invention for 20 years from the effective date of a patent granted in respect of his invention.

This guarantee of exclusive exploitation cannot however be the only incentive needed to spark the wave of inventiveness necessary to transform Nigeria from a consumer nation to an industrialised nation. Otherwise, since the Patents and Designs Act was promulgated in 1970, there should have been a steady stream of applications for the grant of patent by Nigerian inventors being filed at the patents registry.

The experience of other countries teaches that a combination of incentives and policies are needed to facilitate and increase inventiveness.

- **Financial awards made by the government for targeted inventions and other inventions deemed beneficial to the country.**

In the period leading to and during the industrial revolution in England, the government did not leave the reward for important inventions solely to market forces.

The government established from time to time prizes for persons who could invent devices or implements considered to be of significant importance. An example of one such prize was the Longitude Prize, established under the Longitude Act⁴ passed in July 1714. The Act established the Board of Longitude and offered monetary prizes ranging from £10,000 to £20,000⁵ to anyone who could find a simple and practical method for the precise determination of a ship's longitude.

⁴ http://en.wikipedia.org/wiki/Longitude_Act

⁵ http://en.wikipedia.org/wiki/Longitude_Prize#Prizes_offered

Similarly, the Parliament also awarded money to some inventors whose inventions were never patented but were regarded as being beneficial to the society. The largest of such awards was made in 1815 to Edward Jenner, the discoverer of the smallpox vaccination process. He was given the sum of £30,000.00.

Likewise, Nigerian government could identify areas of technology where particular discoveries or inventions are needed and offer specific prizes to anybody who could make the discovery.

- **Industries to be encouraged to invest in research and development and to incentivise their employees who succeed in inventing.**

It is doubtful that manufacturers in Nigeria invest in research and development at all. The private sector however is the place where R&D investments will be most efficiently utilised. Therefore, it is imperative, if Nigeria is to transform to an industrialised country that large industries should be encouraged to invest in R&D.

Tax allowance is already provided for R&D, therefore the government needs to actively push industries to put money into R&D and apply for the grant of patent in respect of any invention or discovery made.

Further, it is necessary for industries to encourage their employees to engage in inventive activities related to their work. Whether they have a formal R&D department or not. Cash awards should be announced for invention of improvements on the machinery or processes of the industry or the product of the industry.

Furthermore given that under the provision of section 2(4) Patents and Designs Act, the invention of an employee in the course of his employment basically belongs to his employer, it will encourage the employee to put extra effort into his inventive activity if he is assured of a share in the patent right if the invention is patented.

- **Universities to be encouraged to become hotbed of inventions and patentable discoveries.**

In countries such as Nigeria where the culture of Research and Development is not as entrenched in the private sector of the economy as it is in the developed countries, the universities are the likeliest places to start off the invention revolution, which could lead to our own industrial revolution.

The government could provide special grants to various universities for targeted research into specific areas of need either in any field of science or technology. Industries may also be encouraged, rather than establish their own R&D

departments, to make grants to universities of their choice with the objective of conducting research into any area of technological need the industry may require. The government should regard such grants as investments in R&D qualifying for tax allowance.

Further, universities should be encouraged to patent inventions made by their employees. These inventions could be licenced to industries where they have practical commercial application. They will then constitute a source of income for the universities in future. This will in turn further fund the commercialised R&D services of the university.

One is aware that Professor Makanjuola of university of Ife in 1974 built the first yam pounding machine. It is doubtful that this invention was patented.

Likewise, sometimes in the 1970s, Late Professor Awojobi of University of Lagos converted an army vehicle to enable it be driven forward or backward using all four gears in either direction. He said the bi-directional capability of the vehicle would make it valuable for a fast retreat in a war situation. One understands that the mechanism enabling the bi-directional movement was never patented.

CONCLUSION

Intellectual property has contributed to making Nigeria one of the fastest growing emerging economies in the world today. It can still play a greater role in transforming Nigeria into a developed economy. Appropriate policies by the government and the private sector has to be adopted to ensure that the potential is realised.

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