



CEHURD  
social justice in health



# INTELLECTUAL & HUMAN PROPERTY & RIGHTS

A POCKETBOOK FOR JOURNALISTS

K I O S  
THE FINNISH NGO FOUNDATION FOR HUMAN RIGHTS



“Journalists have a moral obligation to promote human rights all the time and in every story because media are “watchdogs” whose role is to bark loudly to warn people about threats to their freedom, to their security, to their livelihoods and to their culture.”

– *Internews*

# FOREWORD

This work is part of CEHURD's advocacy for a fair balance between the rights of holders of intellectual property rights and the interests of the wider society that benefits from the new knowledge generated.

This booklet introduces our key partners, the journalists who are not familiar with the field of intellectual property, to the key issues in the ongoing commercial law reform process in Uganda and the region as they relate to human rights.

Intellectual property being a broad, technical and dynamic area, this booklet only offers an introduction to key concepts and issues. We encourage journalists to use it for quick reference and supplement it by reading more broadly and following events as they unfold.

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**Center for Health, Human Rights  
and Development (CEHURD)**

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# KEY ABBREVIATIONS

ARVs	Anti-retroviral drugs
EAC	East African Community
EPAs	Economic Partnership Agreements
FAO	UN Food and Agriculture Organisation
ICESCR	International Covenant on Economic, Social and Cultural Rights
IP	Intellectual property
IPRs	Intellectual property rights
LDCs	Least developed countries
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
WTO	World Trade Organisation
WHO	World Health Organisation

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“People of the same  
trade seldom meet  
together, even for  
merriment and diversion,  
but the conversation  
ends in a conspiracy  
against the public, or  
in some contrivance to  
raise prices.”

– *Adam Smith, The Wealth of  
Nations*

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# 1

## THE CONCEPT OF **INTELLECTUAL PROPERTY**

## INTELLECTUAL PROPERTY

“Intellectual property” (IP) refers to creations of the mind, such as inventions, literary and artistic works, symbols, names, images, and designs used in commerce. These are considered to be property even though they are not tangible, because they are produced at a cost and they have value.

## INTELLECTUAL PROPERTY RIGHTS

The ownership of IP is recognised in law as “intellectual property rights” (IPRs). IPRs are the entitlements that the law gives to owners of intellectual property. IPRs are exclusive rights in sense that only the holder of the right holder is free to exercise those rights, and others are prohibited from using the work without the holder’s permission.

These rights give the creator or originator of the idea legal powers to prevent others from using the creation for a specified period of time, except with their (originator’s) permission.

Intellectual property rights are specified and protected by law for two major reasons: (1) to reward creators for originating new ideas by allowing them benefit from their effort. The underlying aim is **to encourage people to produce new ideas because in the end, society as a whole benefits**, and to encourage disclosure of the invention.

## TYPES OF INTELLECTUAL PROPERTY RIGHTS

Intellectual property is divided into two broad categories: “industrial property” and “copyright.”

### *Copyrights and related rights*

Copyright literary means “right to copy”, and is given for the original *expression* of ideas, not the ideas themselves. In other words, copyright does not cover the idea or information, but the form or manner in which idea or information is expressed.

Copyright may be given for poems, theses, plays, other literary works, movies, dances, musical compositions, audio recordings, paintings, drawings, sculptures, photographs, software, radio and television broadcasts, industrial designs and other artistic works.

The copyright gives the creator or originator exclusive rights to the creation. The copyright holder has a legal right to prevent others from copying or reproducing the work. It also includes the right to be credited for the work, to determine who may adapt the work to other forms, who may perform the work, who may financially benefit from it, and other related rights.

Copyright is typically free and automatic; it is not obtained through official registration with any government office. A copyright is valid for throughout the life of the creator or originator plus at least 50 years after their death, or for a specified period of time in the case of creations that are anonymous or belong to corporate entities.

By standard, material covered by copyright is identified by the symbol ©.

### ***Related rights (neighbouring rights)***

Neighbouring rights or related rights are given to people other than the author of the idea. For example, they are not given to the composer of a song (who gets a copyright) but to the singer (**performers' rights**) and to the person or corporation that made the recording (**producers' rights**).

Therefore, neighbouring rights for phonograms (sound recordings), broadcasts, film production, database creation, photographs, designing of semiconductor topologies, etc.

In the case of performing arts for instance, a performer (musician, actor, etc.) has an intellectual input in their performance over and above that of the author or composer of the work. And under the **Rome Convention** (Art. 7), performers have the right to prevent:

- the broadcast or communication to the public of their performance, unless this is made from a legally published recording of the performance;
- the fixation (recording) of their performance;
- the reproduction of a recording of their performance.

**Performances and Phonograms Treaty of 1996** extends these rights to include the right to licence:

- the distribution of recordings of their performance, for sale or other transfer of ownership (Art. 8);
- the rental of recordings of their performances, unless there is a compulsory licence scheme in operation (Art. 9);
- the “making available to the public” of their performances (Art. 10), in effect their publication on the internet.

The TRIPS Agreement provides the minimum standards for IPR protection. Countries can provide for more extensive protection in their national legislation but not less. Providing for more extensive protection is referred to as “TRIPS plus”.

## *Industrial property*

Industrial property is a category of intellectual property that has industrial application. Industrial property falls into two categories:

- (1) IP related to the creation of technology, such as innovation, invention, and industrial design. IPRs, usually in form of **patents**, are given for to enable the creator of the new technology to recoup the investment they put into research and development.
- (2) IP related to identity, such as **trademarks**, brand names, logos and other distinctive signs that distinguish the goods or services of one company from those of others. This category also includes what is known as “**geographical indications**”, which identify a good as originating from a place where a given product characteristic is largely attributable to its geographical origin of the (as is usually the case with Champagne and wines).

IPRs here (in form of trademarks) are given to avoid unfair competition by clarifying the **identity** of different goods and services. This type of protection may last indefinitely, provided the sign in question continues to be distinctive.

## **THE AGREEMENT (ARTICLE 7):**

“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 obligations.”

## **THE INTERNATIONAL FRAMEWORK FOR IPR PROTECTION AND ENFORCEMENT**

IPRs are set out in national laws and traditionally enforced through national law enforcement mechanisms and legal processes. However, after the founding of the **World Trade Organisation** (WTO) in 1994, the protection and enforcement of intellectual property rights assumed a global dimension.

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) compels all member countries, including Uganda, to protect intellectual property rights in all fields, and for both process and product. Non-compliance is subject to the WTO's dispute settlement mechanism, which may – in the worst case – lead to **trade sanctions**.

### **THE TRIPS AGREEMENT**

The Agreement on **Trade-Related Aspects of Intellectual Property Rights** (TRIPS) is the first to set minimum standards of protection that member countries of the WTO have to give to a comprehensive range of intellectual property. The agreement requires countries to treat nationals and foreigner equally in the protection of IPRs.

## TIPS FOR WRITING ON IPR ISSUES

- Find out what IPR regime applies to the issue you are writing about. Is this a matter of national law? International law? An international treaty? A combination of these?
- Find out which form of IP protection the issue relates to: is it a trademark, copyrights, patent, etc?
- Get expert advice. IPR is a minefield. An expert in the field and/or an IP lawyer should be able to explain what issue is at stake.
- Use the resources available. There are many pressure groups, trade associations and NGOs in the IPR field.
- Don't be afraid to ask basic questions. There is a lot of terminology specific to this field. Check and double check you understand the terms being used.

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# 2

## IPR PROTECTION AND **HUMAN RIGHTS**

## HUMAN RIGHTS CONCERNS IN IPR PROTECTION

High levels of IPR protection can block access to new knowledge, promote **monopoly**, limit production, keep prices high and restrict access to new products. In the end, this could hurt technological progress, public health, education, food security, environmental protection, etc.

As a result, human rights bodies are devoting increasing attention to IPR issues, particularly in the way they relate to medicines; digital information; technology transfer; socio-economic and cultural rights; plant varieties; and development.

Human rights principles and mechanisms require that IPR rules do not stifle access to essential goods for the welfare of society. In addition, human rights law calls for measures that respect, protect and fulfil the **right to education** and provide for the right to the enjoyment of the benefits of scientific progress and its applications

In spite of the strong IPR regulation that the TRIPS Agreement prescribes, it recognises key human rights needs by allowing developing countries flexibility in the implementation of the agreement. These flexibilities may be used to protect public health and nutrition, and to promote the public interest in sectors of vital importance.

## **SAFEGUARDS AND FLEXIBILITIES IN THE TRIPS AGREEMENT**

“**TRIPS flexibilities**” are the explicit and implicit provisions of the TRIPS Agreement that allow developing countries and least developed countries (LDCs) to adopt measures necessary to protect public health and nutrition, and to promote public interest in sectors of vital importance to their socio-economic and technological development.

**The main flexibilities include:**

### ***(1) Transition period***

LDCs like Uganda are not obliged to implement the TRIPS Agreement until 1 July 2013 – and until 1 January 2016 in the case of pharmaceuticals. The Agreement allows LDCs to ask for an extension of this transition period if by that date they have not built a viable technological base.

With technological innovation and adaptation remaining sluggish in Uganda, as it is in most LDCs, there is need to utilise the transition’s policy space more optimally, particularly in the case of the infant pharmaceutical industry, in order to promote public health and seek an extension to the transition beyond 2016.

## *(2) Compulsory licensing*

The TRIPS Agreement allows governments to issue a license to use a patented invention **without seeking the permission of the patent holder** in situations of national emergency, extreme urgency, public non-commercial use, and similar situations.

It is important to note that TRIPS does not limit the grounds or reasons for issuing a compulsory license. However, it requires adequate compensation for the patent holder and the holder of the compulsory licence produces strictly for the domestic market.

## *(3) Parallel importation*

It is common to find a patent holder selling a drug at substantially **different prices** in different countries. The parallel importation provision gives governments the right to licence the importation of the drug from the country where is cheaper.

## *(4) Bolar provision*

The “Bolar provision” allows competitors to **prepare** to produce a patented medicine even before a patent actually expires. This may include testing and processing regulatory approval so that they are ready to start production as soon as the patent expires. This helps to bring in post-patent competition faster.

## THE DOHA DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH

Initially, some governments were unsure of how to interpret the flexibilities that are written into the TRIPS Agreement would be **interpreted**, and how far their right to use them would be respected.

In 2001, the WTO ministerial conference issued a special declaration – The Doha Declaration on the TRIPS Agreement and public health – stating that the TRIPS Agreement does not and **should not prevent members from taking measures to protect public health.**

The WTO ministers underscored countries' ability to use the flexibilities that are built into the TRIPS Agreement. And they, in addition, **extended exemptions on pharmaceutical patent** protection for least-developed countries (LDCs) until 2016.

On one remaining question, they assigned further work to the TRIPS Council— to sort out how to provide extra flexibility, so that countries unable to produce pharmaceuticals domestically can **import patented drugs made under compulsory licensing.** A waiver providing this flexibility was agreed on 30 August 2003.

## **TRIPS AGREEMENT ARTICLE 8:**

- 1). 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 sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.
- 2). Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

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# 3

## **IP LAW REFORM** PROCESS IN UGANDA

## **IPR-RELATED LAWS AND DRAFT LAWS**

As an LDC, Uganda has a transitional period extending to 2013 to implement the general provisions of the TRIPS Agreement, and until 2016 in the case of provisions relating to pharmaceutical products.

In preparation for full implementation, the country started reviewing its commercial laws to align them with the TRIPS Agreement in 2000.

As a result, the **Copyright and Neighbouring Rights Act** (2006) and the **Trademark Act** (2010) have been enacted.

Other draft laws presently in the legislative process include:

- Industrial Properties Bill
- Plant Variety Protection Bill
- Trade Secrets Bill
- Geographical Indications Bill
- Competition Bill
- Anti-Counterfeit Goods Bill

## **IMPLICATIONS OF THE INDUSTRIAL PROPERTIES BILL, THE COMPETITIONS BILL AND THE ANTI-COUNTERFEIT GOODS BILL FOR THE RIGHT TO ESSENTIAL MEDICINES**

The Uganda Constitution (Objective XX) **requires the State to take all practical measures to ensure the provision of basic medical services to the population including medicines.**

The International Covenant on Economic, Social and Cultural Rights (ICESCR, Article 12) **recognises the right of everyone to “the enjoyment of the highest attainable standard of physical and mental health”.** The article calls for access to essential medicines for all without discrimination.

### ***THE INDUSTRIAL PROPERTY BILL AND ACCESS TO MEDICINES***

The Industrial Property Bill is a proposed legislation that directly relate to access to essential medicines. The Bill contains proposals that utilise some TRIPS flexibilities.

However, it also has gaps that compromise the substance and intent of some of the flexibilities, the objectives of the **Uganda Constitution** and the provisions of the **ICESCR**. Though the bill recognises the allowance for pharmaceuticals till 2016, it **does not cater for a possibled extension.**

For example, the Bill unnecessarily requires Government to **consult the patent owner** – thereby giving them a chance to

## REPORT OF UGANDA LAW REFORM COMMISSION

“the reform of intellectual property has to strike a balance between protecting and respecting the rights of industrial property holders particularly holders of patents, and public interest concerns particularly those on access to essential drugs for a least developed nation like Uganda which is affected by diseases like malaria and HIV/AIDS.”

object – before exercising the “government use” provision, under which government may infringe on a patent to produce for its own use.

The bill also undermines the early entry of **generic versions** of patented medicines by restricting preparatory work to scientific research, **leaving out regulatory approval and registration processes**, meaning that generic medicines that tend to be cheaper will not enter the market as soon as the patent for the originator medicine expires.

It further requires applicants for a “compulsory license” to go through the lengthy **court processes**, yet procedures for granting such a licence should be simple and expeditious.

### ***THE COMPETITION BILL AND ACCESS TO ESSENTIAL MEDICINES***

The objective of Uganda’s Competition Bill is “to foster and sustain competition in the Ugandan market so as to **protect consumer interests** while safeguarding the freedom of economic action of various market participants and to prevent practices that limit market access.”

Section 43 (6)(b) of the Bill states that “the prohibition of certain anticompetitive agreements does not restrict the right of any person to restrain any infringement of intellectual property rights granted in Uganda or to impose such reasonable conditions as may be necessary for the

## **HUMAN RIGHTS PRINCIPLES IN IPR REGULATION**

- They require that IP rules do not stifle access to essential goods for the welfare of society,
- These include: access to educational materials, affordable medicines and the preservation of the seed sovereignty for small farmers.
- Human rights law calls for measures that respect, protect and fulfil the right to education
- The right to the enjoyment of the benefits of scientific progress and its applications

purposes of protecting or exploiting such intellectual rights. Under this clause, anti-competitive practices cannot be used to invoke an IPR, contrary to IPR protection norms.

### ***ANTI-COUNTERFEITING DRAFT LAWS AND ACCESS TO ESSENTIAL MEDICINES***

The current wave of anti-counterfeiting legislation processes in East Africa is ostensibly to tackle the growing problem of counterfeits. Counterfeit goods deny legitimate producers and governments sales and tax revenue, respectively, and it is worthwhile to control them.

The EAC has stated the objective of the draft **Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations** as, “To provide a Policy basis for a robust legal framework for the protection and enforcement of Intellectual Property Rights in the Region with specific focus on combating counterfeits and pirated products.”

In the same vein, the objective of the draft EAC **Anti-Counterfeit Bill**, 2010 is “to prohibit trade in counterfeit goods, to establish national anti-counterfeit boards and for connected purposes”.

The challenges that the current approach and focus of anti-counterfeiting legislation faces range from the **definition**

**of counterfeits**; the confusion between IPRs and product quality; the life-threatening **border measures**; giving responsibility of determining counterfeit medicines to **incompetent bodies**; utilising government resources and structures to promote **private interests**; and others.

### ***GENERIC MEDICINES ARE NOT COUNTERFEITS***

The definition of what constitutes counterfeits or counterfeiting is so far the most problematic aspect of anti-counterfeiting legislation processes in Uganda and the rest of the region, including EAC.

The current legislations and draft legislations define counterfeits so broadly to encompass legitimate products, notably generic medicines, referring to goods that are produced without the “authority of the owner of any intellectual property right”.

WHO defines counterfeit medicine as:

*A medicine which is deliberately and fraudulently mislabelled with respect to identity and/or source. Counterfeiting can apply to both branded and generic products and counterfeit products may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient active ingredients or with fake packaging.*

The key aspect of the WHO definition is that counterfeiting is a criminal activity, where there is **intentional misrepresentation**. It differentiates counterfeit medicines from generic medicines, which are produced legally and legitimately, for example, through government issuance of a compulsory licence for production or parallel importation of a patented medicine, both of which are allowed under the **TRIPS flexibilities**.

The definition of counterfeiting under Article 51 of the TRIPS Agreement is restricted to trademark and copyright (and not patent) infringement.

The magnitude of the **AIDS crisis** has drawn attention to the fact that millions of people in the developing world do not have access to the medicines that are needed to treat disease or alleviate suffering. Generic medicines have made it possible to extend treatment to millions of people in poor countries like Uganda, where **all people on public treatment are receiving generic ARVs**.

And with recent research indicating that **ARVs will be needed for HIV prevention** as well, and that **HIV treatment reduces charges of transmission**, there is need to assess the implications of strong IPR protection in countries like Uganda that have poor pharmaceutical manufacturing capacity.

**KENYAN JUDGEMENT (Petition No. 409 of 2009, Patricia Asero Ochieng, Maurine Atieno, Joseph Munyi & The AIDS Law Project V. The Attorney General):**

The judge said ***“I find that Sections 2, 32 and 34 of the Anti Counterfeit Act threaten to violate the right to life of the petitioners as protected by Article 26 (1), the right to human dignity guaranteed under Article 28 and the right to the highest attainable standard of health guaranteed under Article 43 (1)”*** The judgment further reads ***“Enforcement of the Anti Counterfeit Act, 2008 in so far as it affects access to affordable and essential drugs and medication particularly generic drugs is a breach of the petitioners’ right to life, human dignity and health guaranteed under the Constitution”*** the case is Petition No 409 of 2009.

## IMPLICATIONS OF THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT AND THE ANTI-COUNTERFEIT GOODS BILL FOR THE RIGHT TO EDUCATIONAL MATERIALS

The Uganda Constitution provides that the State shall promote free and compulsory basic education. In addition, the State shall appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible.

The ICESCR recognises the right of everyone to education.

### *THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT AND ACCESS TO EDUCATIONAL MATERIALS*

The Copyright and Neighbouring Rights Act, enacted in 2006, gives the author of an original work exclusive rights to reproduce, publish, and perform the work in public and to make adaptations of it **throughout their lifetime plus 50 years after their death**.

The Act recognises the principle of “**fair use**”, under which one may produce, translate, adapt, arrange or transform copyrighted work for their private personal use.

In addition, it caters for the educational needs of visually impaired persons by exempting the transcribing into braille or sign language of copyrighted material for educational purpose of persons with disabilities.

However, the Act also contains provisions that undermine the right of Ugandans to access educational materials. For instance, the Act's list of the works that are eligible for copyright includes, among others: **articles, books, pamphlets, lectures, addresses, sermons and "other works of a similar nature"**. All these are materials used in day-to-day education.

Under Section 5(1)(e), the Act broadly refers to "electronic data banks" without requiring (as the TRIPS Agreement does) that the selection or arrangement of such data banks should constitute an **original creation** for them to be granted copyright protection.

This means that a lot more databases that would have been available as resources for teaching, learning and research will be copyright protected and therefore not readily accessible and usable.

Under Section 46, the Act further **outlaws importation of copyrighted work** into Uganda except with the permission or licence from the holder of the copyright in Uganda.

This restriction is not realistic in cases where the copyright holder has already marketed the copyrighted material in the country of import, and effectively denies Ugandans, including government, the opportunity to import cheaper educational materials from other countries.

Uganda in a **net importer** of copyright materials and it is in their interest to maintain the scope of copyright protection at its minimum.

***THE ANTI-COUNTERFEIT GOODS BILL AND ACCESS TO EDUCATIONAL MATERIALS***

One of the objectives of the Anti-Counterfeit Goods Bill is to prohibit trade in counterfeit goods that infringe upon protected IPR.

In essence, it does not recognise the flexibilities in the TRIPS Agreement that allow **goods to be legitimately produced** under certain circumstances without the authority of the IPR owner, for example under “compulsory licensing”, “government use order”, “fair use clauses” and “parallel importation” provisions.

Further, by referring to the “successor in title, a licensee or agent” of the IPR holder, the bill strangely extends rights to even those whose IPRs are not registered in Uganda.

## **IMPLICATIONS OF THE PLANT VARIETY PROTECTION BILL FOR THE RIGHT TO FOOD**

**The Uganda Constitution** provides for food security and nutrition. It requires the State to take appropriate steps to encourage people to grow and store adequate food; establish national food reserves; and encourage and promote proper nutrition through mass education and other appropriate means in order to build a healthy State.

**The Uganda Constitution** further requires government to endeavour to fulfil fundamental rights to social justice and economic development and, in particular, food security.

### ***THE TRIPS AGREEMENT AND AGRICULTURE***

The TRIPS Agreement has three items related to agriculture: geographical indications (Art. 22-24); patent protection of agricultural chemical products (Art. 70.8 and 70.9); and plant variety protection (Art.27.3(b)). The UN Food and Agriculture Organisation (FAO) has raised concerns about the implications of the third item for farmers' rights.

### ***THE PLANT VARIETY PROTECTION BILL AND THE RIGHT TO FOOD AND FARMERS' RIGHTS***

The Plant Variety Protection Bill has draft provisions that will entrench the rights of breeders and companies and at the

same time curtail the rights of small farmers to exchange, save and breed new varieties using hybrid seeds.

**Breeders are usually the giant companies that pay research institutions to propagate new hybrid seed varieties** with improved characteristics, such as yield performance, appearance, early maturity, and disease and drought resistance.

If the bill is passed in its current form, the protection of breeders' rights is likely to further increase the availability of hybrid seeds on the market. As this happens over time, certain forms of **traditional seeds will become scarce**, threatening the biodiversity of the country as well as the financial viability of farming for the rural poor.

This is contrary to the concept of farmers' rights as developed by FAO arising from the past, present and future contribution of farmers in conserving, improving and making available plant **genetic resources**, particularly those in the centres of origin/diversity.

The purpose of these rights is to ensure full benefits to farmers and support the **continuation of the farmer's contributions** which plant breeder's rights may not address.

## **THE EAC PROCESSES AND IMPLICATIONS FOR UGANDA'S IPR REFORM**

There have been a number of initiatives that have been taking place at the EAC regional level which have implications for the implementation of Intellectual property laws and policies at the country level in Uganda.

### ***IMPLICATIONS OF EAC-EU ECONOMIC PARTNERSHIP AGREEMENT***

The European Union (EU) is negotiating Economic Partnership Agreements (EPAs) with its trade partners as a way of revising its trade arrangements to conform to WTO rules. The **EAC is negotiating as a bloc**.

The proposed **EAC-EU EPA contains strong provisions on IPRs protection** – provisions that contravene the TRIPS flexibilities. This new approach from the EU could short-circuit attempts to ensure full consideration of TRIPS flexibilities.

### ***EAC DRAFT POLICY ON ANTI-COUNTERFEITING, ANTI-PIRACY AND OTHER IPR VIOLATIONS***

The EAC Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations provides a Policy basis for a robust legal framework for the protection and enforcement of IPRs in the region.

## ***DRAFT EAC REGIONAL PROTOCOL ON PUBLIC HEALTH RELATED WTO-TRIPS FLEXIBILITIES***

The *Draft EAC Regional Policy and Protocol on Utilisation of Public Health Related WTO-TRIPS Flexibilities and the Approximation of National Intellectual Property Legislation 2010* provides guidance to member countries of the EAC to enact IPR laws that promote public health by utilising all the flexibilities in the TRIPS Agreement.

The policy/protocol document highlights specific provisions in Uganda's Industrial Property Bill and other draft laws that need to be adjusted and makes detailed recommendations - including on the specific wording - for appropriate adjustment.

“It takes the media to  
legitimate an issue as an  
issue of public concern.”

- *David Nexon, health  
specialist*

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# 4

## **ROLE OF MEDIA IN THE IPR REFORM PROCESS**

## THE ROLE OF THE MEDIA IN SHAPING IP REFORM AND UPHOLDING HUMAN RIGHTS

It is unrealistic to expect government leaders to be able to promote reform by themselves. As a watchdog of society and **instrument of public accountability**, the mass media has a major role to play in promoting good policies and building decent societies.

Cases of reforms that have been initiated, halted or adjusted in different parts of the world as a direct result of articles or commentaries in the media are well documented. This is just as true in the area of trade and IP policies as it is in other areas.

The media is the primary source of information and news for most people across the globe, and plays a key role in shaping public opinion. By **drawing the attention** to behaviour that is generally perceived as acceptable and exposing what is unacceptable, media can raise **public awareness, activate values, and generate outside pressure** from the public and international community against bad policies and practices.

As far as IP issues are concerned, examples of what the media may do include:

- **Build their own capacity to understand IP issues**, which tend to be technical and dynamic. It is important to understand the WTO system and how it functions;

the ongoing negotiations; which country or region is taking which position on an issue on the table and why it is taking such a position; and to assess which position is in the best interest of Uganda and the region.

- Ensure that negotiating positions and decisions taken by government leaders are constantly scrutinised, and that when top leaders take good decisions they get strong support from the media.
- The media should also follow ongoing policy and legislative processes and report and evaluate them at every stage.
- generate community support to promote social and economic change across the country, which the media is best positioned to generate
- Persuade the public and parliament to demand that the President and cabinet act in public and national interest.
- Empower ordinary citizens through civic education, information and mobilisation to participate more directly in the discussion and debate of ongoing IP reforms and their impact the different aspects of social life.

# 4

## CONCLUSION

The IPR and commercial law reform process is both an opportunity and challenge; an opportunity to promote technological progress while also protecting human rights, but also a challenge because of an unhealthy combination of lack of sufficient knowledge at the population level and a weak negotiating position vis-à-vis other countries and negotiating blocs. The current laws and draft laws are not even taking advantage of the limited opportunities available through the TRIPS flexibilities, and a lot is at stake, including public health, food security and education. Journalists, as watch dogs of society, need to follow and report this process and how it affects the rights and welfare of Ugandans.

## KEY RESOURCES

Medicines and patents: <http://www.cepr.net/index.php/publications/reports/promoting-good-ideas-on-drugs-are-patents-the-best-way/>

World Intellectual Property Organisation: <http://www.wipo.org>

WIPO Treaties: <http://www.wipo.int/treaties/en/>  
[http://www2.gsb.columbia.edu/ipd/j\\_ipr.html](http://www2.gsb.columbia.edu/ipd/j_ipr.html)

Patents: <http://www.patentlawlinks.com/>

Medicines and TRIPs: [http://www.oxfam.org/en/policy/bp95\\_patentsvspatients\\_061114](http://www.oxfam.org/en/policy/bp95_patentsvspatients_061114)

World Trade Organization: <http://www.wto.org>

TRIPs: [http://www.wto.org/english/tratop\\_e/trips\\_e/t\\_agm1\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/t_agm1_e.htm)

Lobby and advocacy groups

Center for Health, Human Rights and Development  
<http://www.cehurd.org/>

Electronic Frontier Foundation  
<http://www.eff.org/issues/intellectual-property>

Campaign for Digital Rights  
<http://uk.eurorights.org/>

## **KEY IPR TERMINOLOGIES**

### **Applicant**

The person(s) or organisation(s) who applies for an IP right.

### **Assignment of rights**

This occurs when you sell or bequeath your IP rights to someone else. The assignee then owns those rights.

### **Authorised user**

A person who is authorised by and under the control of the owner of a trade mark to use the trade mark in relation to goods and services covered by the trade mark.

### **Circuit layout rights**

Circuit layout rights automatically protect original layout designs for integrated circuits and computer chips. While these rights are based on copyright law principles, they are a separate, unique form of protection.

### **Collective mark**

A mark used in the course of trade by members of an association. An association includes any organisation of people with a common purpose and a formal structure such as a society, club, trade union or other body. A mark used in the course of trade by members of an association. An association includes any organisation of people with a common purpose and a formal structure such as a society, club, trade union or other body.

### **Common law trade mark**

An unregistered trade mark, often identified by the TM symbol. The owner of the mark is claiming it as a trade mark under common law. They still have rights but it may be harder to enforce these rights and prove ownership.

## **Copyright**

An intellectual property right which protects the original expression of ideas, not the ideas themselves. Copyright is free and automatically safeguards your original works of art, literature, music, films, broadcasts and computer programs from copying and certain other uses. Material covered by copyright is identified by the symbol ©.

## **Design**

A design is the overall appearance of a product. This includes the shape, configuration, pattern and ornamentation which, when applied to a product, give it a unique visual appearance. Design registration is for manufactured products but not artistic designs.

## **Filing date**

The date when the application reaches IPR office of government in complete form.

## **Geographical Indication**

Geographical Indications (GIs) identify the specific geographical origin of a product, and the associated qualities, reputation or other characteristics. They usually consist of the name of the place of origin.

## **Industrial design**

An aesthetic creation determining the appearance of industrial products. Industrial designs protect the aesthetic aspects (shape, texture, pattern, colour) of an object, rather than the technical features. TRIPS, requires that an original design be eligible for protection from unauthorised use by others for a minimum of 10 years.

## **Industrial property**

Industrial property is a subset of intellectual property, referring to those types of intellectual property that have an industrial application.

## **Infringement**

Use of another person's IP without their consent.

## **Innovation patent**

A relatively quick, inexpensive way to protect innovations that would not qualify for full patent protection. Innovation patents require only novelty and an 'innovative step' to be valid.

## **Innovative step**

An invention has an innovative step unless it is a variation on what is already known in ways that make no substantial contribution to the working of the invention.

## **Intellectual property (IP)**

Property created by your mind or intellect. Types of IP include patents, trademarks, designs, confidential information/trade secrets, copyright, circuit layout rights and plant breeder's rights.

## **International IP**

There is no such thing as a worldwide patent or trade mark. IP rights are valid only in the country in which they are granted. Protection can be sought through international agreements such as the Patent Cooperation Treaty (PCT ) and Madrid Protocol.

## **Inventions**

A new solution to a technical problem.

## **Madrid Protocol**

A simplified process of applying for trademarks overseas. Only one application needs to be completed that lists all the countries you wish to be registered in.

## **Non-exclusive licence**

A licence that has no features of exclusivity. The licence is granted on the basis that the owner of an IP right retains the right to commercialise that asset and that the owner may grant any number of licences without limitation.

## **Notice of opposition**

A notice that a third party has lodged an opposition to your IP right being granted.

## **Opposition**

Patents, trademarks and designs all have a period of opposition, in which third parties may challenge the registration of IP.

## **Patent**

A patent is an IP right granted for any device, substance, method or process that is new, inventive and useful.

## **Patentable**

The ability of an invention to satisfy the legal requirements for a patent in a particular jurisdiction.

## **Plant breeder's rights (PBR)**

Used to protect new varieties of plants, a plant breeder's right gives the owner exclusive commercial rights to market a new variety or its reproductive material.

## **Prior art**

Matter which is in the public domain and hence not patentable

**Royalty**

A royalty is compensation paid to the owner of an IP right for the use of that right. A royalty is usually payable as a portion of proceeds from sales.

**Trademark**

A trade mark can be a letter, number, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or any combination of these, which is used to distinguish goods and services of one trader from those of another.

**Trade secret**

A type of IP and a strategy for protecting your IP. It includes proprietary knowledge (know how) and other confidential information.

**Utility models**

are similar to patents, but often confer rights for a shorter duration to certain kinds of small or incremental innovations.

Human rights are a  
moral compass for  
good journalism.

Knowing and  
understanding human  
rights will make you  
a better and more  
professional journalist.

CENTER FOR HEALTH, HUMAN RIGHTS  
AND DEVELOPMENT [CEHURD]

614 Tufnell Drive, Kamwokya

P.O Box 16617 Wandegaya, Kampala

Tel: +256 414 532283

[www.cehurd.org](http://www.cehurd.org)