



AfICTA Policy Advocacy Series 001

Right Policies For IP Creation & Retention in Nigeria



Introduction

Nigeria ranks 118 out of 132 on the [Global Innovation Index GII](#) global Ranking 2021 showing how poor innovation is in Nigeria with South Africa (61), Tunisia (71) and Kenya (85) topping the charts in the African region. One of the major issues that plagues the IP Protection Industry is the retention of IP rights and this stems from the systemic unavailability of local sources of funding which encourages innovators especially in the IT sector to retain businesses within the Nation's GDP.



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Access Webinar Recording: <https://youtu.be/9IzWemvwide>

About Webinar

AfICTA Nigeria held the first edition of its webinar series “Policy Advocacy Series - PAS”. This is a series of webinars that brings actors from all stakeholder groups in the Nigerian ICT Ecosystem to discuss and proffer policy solutions that engenders and spurs digital economic growth. Subsequent webinars would strive to ensure accountability on recommendations to the Federal Government.

The webinar was a very successful one with panellists and participants from all over the country online who enriched the collective discourse. The Moderator, **Mr Inye Kemabonta**, Nigerian Coordinator, AfICTA opened the session by welcoming the panellist for brief Introductory remarks and presentations.

Presentations

After introductions were made by **Ms Nneka Ukay**, The Executive Secretary, Innovations Supports Networks; **Mr Pius Okigbo Junior**, Chair National Consultative Forum for ICT and CEO InfoSoft Nig Ltd; and **Mr Folabi Esan**, Managing Partner at Adlevo Capital.

Ms Nneka spoke on the need to raise consciousness over the importance of ownership of IP and its effectiveness in driving entrepreneurship. In her talks, she commented on the work going on at Innovation Support Network which focuses on driving effectiveness in digital innovation not just from a technology standpoint but from entrepreneurship and in daily life. The impalpability of IP makes it a very complex terrain to navigate and globalization also increases the susceptibility of Intellectual property to theft.

The World Intellectual property office (WIPO) [statistics](#) on IP Filings in Nigeria albeit skewed due to poor data collection and unavailability of IP Stats show the disparity in IP Filings and ease of doing business in Nigeria indicative in the correlation to National GDP.

Key Recommendations:

- IP rights "granted" have to be considered as a tangible outcome of the economic and entrepreneurial ecosystem in Nigeria.
- Individuals, business owners, ecosystem enablers and the government have to discuss ways to drive adoption of ownership of ideas through the incorporation of Intellectual property.
- Data on IP has to be considered not only as a body of knowledge but a resource and a fulcrum that can drive youth engagement, economic development and Societal development.

Presentations

Pius Okigbo Jr spoke on the legal perspective to consider in resolution to IP regulation challenges. In his experience, he strongly advises that the litigation process for addressing issues of IP infringement has to be abated to prevent innovators from being dissuaded to keep their ideas within Nigeria.

Mr Pius also highlighted another major IP issue in the mainstream Nigerian cooperate system is the protection of Indigenous IP solutions being deployed in the public sector which [Executive order 5](#) now caters for. The intended purpose is to guarantee the protection of homegrown IP solutions over foreign solutions.

Mr Folabi Esan held a different view on the best ways to foster IP creation and retention in Nigeria. He stated that "Ideas are worthless and execution is everything". Ideas are only important at least to investors based on the plan to bring it to product marketability, scaling and profitability etc.

For a country like Nigeria at this stage of development, the misconception that innovation comes through ideas alone is quite unproductive because rarely do ideas transform into tangible value. The best way to leapfrog in the development process to create opportunities and jobs is through "**innovation by doing**".

Studies show that **Radical Innovation** and **Incremental Innovation** are the bedrock for IP creation. The advantage of incremental innovation over radical innovation is that incremental innovation favours the creation of IP through the process of constantly doing and testing things that work and those that don't in the market as opposed to the radical innovation

Key Recommendations:

- **The government has to create a "slush fund" and a department of an agency that is empowered with the right professionals to provide legal services, advice and knowledge to innovators in order to can engender retention of IP.**
- **The federal government and actors in the Intellectual Property ecosystem need to harness other forms of intellectual property not just patents.**
- **The public sector needs to also establish structures for defending patents locally and globally.**
- **The government/public sector has to utilize its resources more efficiently as its efforts are greater than the private sector's.**

which entails the work done by researchers and in universities is the outcome which is a "**tacit IP**" that is harder to replicate and inherently harder to infringe upon.

Another popular misconception is that the private Venture capitalists (VCs) are the major risk-takers that do so to earn a great return but this was [debunked by Mariana Mazzucato](#) in her book "[The Entrepreneurial State: Debunking Public vs. Private Sector Myths](#)" where she highlights that the public sector has a very vital role in creating the enabling environment for strategical investment in innovation.

Panel Discussion

Following the presentations, the panellists answered key questions from the Moderator based on the theme of the event to give recommendations to the Federal Government on the matter of Policy regarding IP retention and Creation in Nigeria.

Mr Folabi, a Manager of a Private Equity (PE) firm was asked the first question: *“Do you believe there are ways that we can encourage from the government perspective more investment or improved investments from local structures for start-ups within the Country. How can the government catalyse more funding from the local structures for start-ups to ensure they help retain the rights to IP in-country”?*

In his response, Mr Folabi pointed out that currently, the data suggest that in 2021, Nigeria invested over \$2BN into Venture capital, private sector, start-up companies but about 94% of that comes from foreign sources which implies that whilst these companies carry out business in Nigeria and pay taxes within the state, the long-term value of unicorn companies which get enlisted on any stock exchange market effectively becomes owned by foreigners.

Key Recommendations:

- **The government has to first recognize the vision for certain shifts in technological or economic curves and proactively give the initial thrust by setting aside "slush funds" to subsidize companies, research universities, research individuals, start-ups and venture capitalists with the sole purpose of optimizing the return on ideas that would best suit this direction.**
- **The government can also offer a first loss advantage to the VCs up to certain pre-set amounts and alleviate tax commitments as an incentive to drive invention.**
- **[Start-up Investment Acts](#) & Policies such as the ones in [Tunisia](#) & [Senegal](#) could be adopted in Nigeria as well.**

In Conclusion, Mr Folabi addressed another issue surrounding funding from the local structures which is the issue of collateral suggesting that the [global frameworks for IP Collateral](#) could be looked into when addressing matters of providing funding for IP creation.

Mr Pius Okigbo also contributed on the role of the government in de-risking investment into start-ups in Nigeria. He explained that in his experience one of the rampant issues of IP retention in Nigeria is the request for Advance Payment Guarantee (APG) which is acknowledged only by a bank in monetary value. He suggested that in situations as such, the government through slush funds that could be accessed by individuals and startups can be an enabler for IP retention. He also mentioned that the most proactive Agency currently is the NCC and encourages more engagement with the [NCC](#) to spearhead a coordinated effort on the front for IP creation, Retention, Utilization and registration in Nigeria.

Panel Discussion

Mr Folabi was asked the second question: *"Both of you agree that there is a role for the government in enabling IP Creation, Retention and Utilization in Nigeria. How will this role be best articulated and what specifics do you recommend? Could it be in terms of de-risking investments from Private Equities (PE) & Venture Capitalists (VCs) or setting up Outright grants from an investment Agency?"*

In his response, he emphasized that there is a need for a more coordinated and less fragmented approach in managing all the agencies responsible for enabling development in the Innovation ecosystems. The umbrella agency that should be responsible for coordinating the issues for IPR in Nigeria is **National Office for Technology Acquisition and Promotion - NOTAP** and they do have articulated laws for this purpose but we must now engage NOTAP and X-Ray their internal operations to ensure it pivots from the command and control approach of coordinating the IP creation efforts to a more learning inclined approach by collaborating with all the involved entities and agencies on the best way to harness all the IP generated within the country and foster more creation by making the environment more conducive.

Ms Nneka Ukay was asked the third question *"The dire situation currently in the IP rights structure in Nigeria proves that the Agencies responsible for coordinating a concerted effort towards development in the IP ecosystem need stakeholder support and input. Would you suggest developing a framework for IP Rights retention in Nigeria and in that vein, would the policies laid out by any of the various agencies (intended as the steering anchor for this change) be the appropriate direction to take?"*

Ms Nneka spoke on the discussions of developing a National framework for IP retention being too pre-emptive and premature as those discussions are typically encouraged at the end on the Venture capitalist Pipeline under 'governance'. She also further buttressed that the acute problems right now are on the creation of a vast amount of IP and in order to address these issues, Research and Development R&D has to be deployed more holistically by both the public and private sector to deliberately ingrain and develop the culture of innovation and establish an IP creation pipeline which percolates a large number of IPs to defend and in turn retain.

The Way Forward

The one thing prevalent in all countries where innovation is fostered rigorously is the synergy between the public and private sectors. In Nigeria, there is a massive disconnect between the public and private sectors in their efforts to engender innovation. There is need for more meticulous collaborations between the public and private sector with checks and balances that aim at promoting accountability and creating an enabling environment for IP creation, protection and retention.

Important consideration for the Public Sector on Engendering IP Creation and Capacity development .

- The public sector must have a vested interest in the development of solutions and services within the Nation. The public sector would recoup on its investment by adopting the local content developed in its local agencies.
- R&D in the educational sector and in hubs by the public sector is key.
- Investments have to be tied to Key Performance Indicators (KPIs) that monitor the by-products of their investments.
- The correlation between IP retention and ease of doing business cannot be overemphasized. The government must encourage innovators to retain their IP within the Country by making the market conducive.
- Initiatives such as concessions for local investors and incentives for innovators create a more enabling environment to spur innovation.
- A National Innovation strategy has to be established and deployed holistically in order to perfect the continuum of deliberate R&D in technologically driven solutions, IP Creation, enabling environment for technological advancement and adoption/utilization of Local Content that culminates into investible businesses.
- NUC, ITF, Ministry of Education have to be brought onboard on the discussions on mapping a National Innovation Strategy and the most prudent agencies that have been pinpointed as the best-positioned to lead this charge are **NITDA** and **NCC**.
- All the agencies with vested interests such as Central bank, NITDA, ITF, PTDF, Bank of Industry, NSIA, NCC, NUC, Ministry of Education, AfDB among others must agree on executing more calculated efforts towards improving the IP industry in Nigeria coordinated by one Agency.

Important consideration for the Public Sector on Engendering IP Creation and Capacity development

- NITDA & NOTAP should be mandated to coordinate the National strategy on creating a robust Innovation ecosystem.
- All aforementioned agencies have to collectively fund this project by chipping in with challenges and ideas and then creating a “Challenge Support Fund” launched periodically for access by business hubs and educational hubs to submit proposals to acquire the slated funds to channel towards creating a solution that resolves the problem at hand.
- Nigeria should not be looking at just starting from scratch in the process of creating a local content solution but the government has to assist with legislation that promotes local content by ensuring that Nigerians are included in the value chain of OEMs and ensure that they build capacity by mandating adding value to labour in Nigeria instead of employing foreign labour to operate the OEMs that are being deployed.

Q & A Session

How can the government improve on the enforcement of IP laws, as well as retention of IP in Nigeria? Particularly addressing the influx of foreign capital that usually "takes over" the ownership of our IPs?

Mr Folabi pointed out the major issue deterring the private sector from investing in IP Creation and Retention in Nigeria is the risk associated with the Market. He stated that, contrary to the lack of enthusiasm rife within the private sector on investment in IP creation in Nigeria decades ago, there is a gradual shift in cycle and a growing inclination from the private sector in matters of IP creation and retention. The rather acute question now is how the government can catalyse a more rapid change and this would be achievable through individual avenues such as tax breaks and capital incentives for entrepreneurs and individuals willing to invest in these businesses, and institutional avenues such as the Bank of Industry that provides support funds to create an enabling environment for VCs and Investors and help alleviate the risk accompanied with the market.

Conclusion

The chasm in communication between all the entities within the Innovation ecosystem has to be broken down and dialogues need to be continually promoted to raise awareness on the solutions and steps that can be taken to improve the innovation space generally in Nigeria. Cross-accountability has to be imbibed by both the public and private sectors to achieve our goals as an industry. Ignorance can no longer be accepted by the public institutions and we must ensure we listen to both sides of the table and apply a multi-stakeholder approach to achieve results. We also must begin to have a sit down on drafting and mapping steps of a National framework for the Innovation ecosystem recognizing the software industry as a very viable industry like the extraction, fossil fuel and entertainment industry bringing all actors on board this process in order to achieve any tangible results.

Closing Remarks

Mr Thabo Mashegoane, Chairman AfICTA, thanked everyone on the webinar and commended the organizing team for conveying the very rich discussions. He also emphasized that key outcomes from an advocacy standpoint have to be followed and implemented strategically, particularly from the government, he advised that key recommendations listed out and disseminated to the public institutions are to be considered and they have to act purposefully by enacting litigation processes and development process for a strong framework as suggested earlier fully taking the considerations of the private sector, academia and other key actors seriously. In conclusion, the Chairman welcomed all the participants to join AfICTA and invited them to the [AfICTA Annual Summit](#) slated for **December 8-9 2021**.



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