

**REPUBLIC OF RWANDA**



**MINISTRY OF TRADE AND INDUSTRY**

# **Rwanda Intellectual Property Policy**

Kigali, November 2009

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## 1. Issue

In the present age of globalisation, information has become more mobile and more vital than ever before. Information is the lifeblood of development, the lifeblood of technology, of products and services, of Government, and of business. Information is value. It is therefore increasingly important that information is codified and that its value is recognised. Intellectual property defines the limits under which information in the form of creations and innovations can be owned and how it can be transferred.

For a low-income country such as Rwanda, the extent of growth in the medium and long-term will be determined by how our people access and utilise information, how technologies from abroad that suit the needs of our economy are accessed, and how we innovate and create value within Rwanda. It is therefore vital that Rwanda has a functioning intellectual property system, to allow people to realise the full value of their creations, and to allow them to access the creations of others.

In an economy based more and more on knowledge and technology, industrial and technical innovation will be fundamental to the improvement of citizens' social and economic conditions. Industrial and technological innovation enables productivity to be strengthened, new industries and new job opportunities to be created, as well as strengthening the competitiveness of national companies on global markets. Industrial property protection also creates a framework for cooperation between universities, research institutions and industry, and promotes the transfer of technologies to productive sectors.

This Policy is intended to encourage technical innovation, and to promote the industrial and commercial use of technical inventions and innovations so as to contribute to the social, economic, industrial and technological development of the country. The grant of exclusive rights to technical inventions and innovations is a means, for the State of Rwanda to recognise the merits of individuals and companies that make a remarkable contribution to the country's economic and technological progress.

## 2. Background

Intellectual property rights (IPRs) are the rights given to persons over their creative ideas, usually giving the creator an exclusive right over the use of their creation for a certain period of time. They cover a broad range of legal rules that govern and regulate the ownership, use and transfer of the subject matter that is protected<sup>1</sup>, including:

- copyright and related rights (i.e. the rights of performers, producers of sound recordings, broadcasting organisations and for architectural designs);
- trademarks including service marks;
- geographical indications including appellations of origin;
- industrial designs;
- patents including the protection of new varieties of plants;
- the layout-designs of integrated circuits; and
- undisclosed information including trade secrets and test data.

As Box 1.1 shows<sup>2</sup>, although an abstract concept, intellectual property is more widespread than one might imagine. For example, a simple jar of coffee can contain a number of elements of intellectual property – from the contents, to the shape of the jar, to the branding and colours used on the labelling – the producer, in this case Nestle, is protected in a number of ways from the potential of other firms duplicating its designs.

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<sup>1</sup> [http://www.wto.org/english/tratop\\_E/TRIPS\\_e/intel2\\_e.htm](http://www.wto.org/english/tratop_E/TRIPS_e/intel2_e.htm)

<sup>2</sup> Gowers Review of Intellectual Property, HM Treasury, United Kingdom, December 2006

### Box 1.1: IP resides in everyday objects



The contents of a jar, the lid and seal may be protected by **patents**. Registered and unregistered **design rights** can also protect the lid and shape of the jar. **Copyright** can protect the artwork in labels, and **trade marks** can protect the shape of the jar, labels, colours used, and brand names.

Source: The 'NESCAFÉ Gold Blend' image is reproduced with the kind permission of Société des Produits Nestlé S.A.

## 2.1 Rationale for intellectual property

The rationale for having rights over ideas and their use is to create and retain incentives for creation. For example for patents, firms investing substantial resources in research and development (R&D) to come up with new ideas for their products and production processes – whether drugs, computer software or machinery – expect a return on this investment. If they had no rights over these new ideas, other firms could quickly copy and exploit them for profitable advantage. Firms that come up with ideas would therefore have no incentive to have done so in the first place.

The rationale for IPRs is similar in the area of copyright. Performers, artists and broadcasters need to retain incentives to create original ideas and to benefit from them. Without these incentives, the cultural output of these individuals may be significantly lower leaving the whole of society poorer as a result.

While rights must be protected, the optimal time period for this should be finite. Since for the greater good and the improvement of public welfare, the ideas produced may need to be widely available in order for science, technology and commerce to progress and create new wealth. The finite period of patent protection is usually set somewhere between five and twenty years, while protection for copyrights such as for a novel or song can last up to fifty years.

The ideal IPR system creates incentives for firms to innovate, without limiting access for consumers and follow-on innovators. It must attain the right balance in a world that is rapidly changing so that innovators can invest in their own ideas and creations, while benefiting by “*standing on the shoulders of giants*” in the form of the ideas of others.

## 2.2 The international context: WIPO & TRIPS Agreement

The IP Policy and Law have been developed in the context of international agreements on intellectual property – in particular, the World Intellectual Property Organization (WIPO) and the World Trade Organisation’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which provide guidelines for unifying countries’ policies on IPRs and are the broad framework within which countries discuss and resolve disputes around IPRs.

Rwanda acceded to the Convention establishing the World Intellectual Property Organisation (WIPO) in 1983, as well as the Paris Convention for the Protection of Industrial Property and the Bern Convention for the Protection of Literary and Artistic Works, in the same year. These conventions were brought under the WTO’s

TRIPS Agreement in the 1986-1994 Uruguay Round. In 1996, Rwanda acceded to the WTO and has therefore been subject to the TRIPS Agreement ever since.

The TRIPS Agreement was introduced to narrow the gaps in the way IPRs are protected around the world, and to bring them under common international rules. It establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members. When there are trade disputes over IPRs, the WTO's dispute settlement system is a means of resolving them.

The Agreement is based on the basic principles of non-discrimination: national treatment (treating one's own nationals and foreigners equally), and most-favoured-nation treatment (equal treatment for nationals of all trading partners in the WTO). National treatment is also a key principle in other intellectual property agreements outside the WTO.

The TRIPS Agreement has an additional important principle: **intellectual property protection should contribute to technical innovation and the transfer of technology**. Both producers and users should benefit, and economic and social welfare should be enhanced. Rwanda's IP Policy must comply with the TRIPS Agreement, but should also use its exceptions intelligently.

Beyond treaty membership, Rwanda has been a participant in WIPO, and particularly, in the negotiations at Council for TRIPS at the WTO. This has included a leadership role as the coordinating country for LDCs during the negotiations for the extension of the transition period for LDCs to implement the TRIPS Agreement. At the regional level, Rwanda is an observer to the ARIPO and there are plans for the country to become a full member. Also notable at the regional level is Rwanda participation in the European Communities (EC) and the EAC economic partnership agreements (EPAs) where IP issues are being discussed.

### ***2.3 The Rwandan context: IP administration***

Rwanda has had some form of IP framework since the colonial times. The policy and legal environment has continued to evolve since then, with incremental changes being introduced over time. The lead agency for policy-making and legislative development on IP in Rwanda is MINICOM except with respect to copyright where the lead agency is MINISPOC. Until mid-2008, a few staff at MINICOM were responsible for all IP policy and legislative work, as well as IP administration. At MINISPOC, which deals with copyright matters, there is also limited staff time dedicated to copyright. With the creation of the RDB and its takeover of IP administration, there will be some staff time freed at MINICOM and the MINISPOC to focus on policy-making, policy implementation and monitoring.

While there has been some use, the level of use of existing system remains quite low. For example, since independence only 114 patents have been issued. Table 1 below provides the figures with respect to patents, trademarks and industrial designs showing grants to both nationals and foreigners.

**Table 1: Industrial Property Grants in Rwanda since Independence<sup>3</sup>**

	<b>Patents</b>	<b>Trademarks</b>	<b>Industrial Designs</b>
<b>Nationals</b>	2	875	14
<b>Foreigners</b>	112	5430	15
<b>Total</b>	<b>114</b>	<b>6025</b>	<b>29</b>

IP administration has now been moved to RDB as part of on-going legal and commercial reforms aimed at facilitating business entry and commercial activities. In addition to IP administration, RDB is also responsible for registration and administration of matters related to companies and secured transactions, among others. At the moment, the IP administration system, which all remains manual, is being set up with two new legal officers just recruited.

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<sup>3</sup> Source: MINICOM

Currently, RDB does not have capacity for patent examination and considering the size of the country and rate of application for IP titles the office does not intend to become an examining office. Rather, the vision is for Rwanda to join ARIPO and rely on the examination capacity there.

## ***2.4 The Rwandan context: IP enforcement***

The new IP Law includes extensive provisions on enforcement and provides a range of powers to the judiciary and special tribunals, the police and customs authorities to address IP enforcement. The law also seeks to provide safeguards for third parties in line with the TRIPS principles. The promulgation of the new policy and law also coincides with the inauguration of the Commercial Court branch of the High Court of Rwanda under whose jurisdiction IP issues fall. These are particularly important developments for Rwanda. The reason is that while there are increasing complaints regarding counterfeiting, there is very limited technical and human capacity to address claims of infringement within the police and the customs department. For example, currently the customs department has no capacity to distinguish counterfeit products and relies wholly on the World Customs Organisation (WCO) Regional Intelligence Liaison Office (RILO) based in Nairobi for detection.

Within industry, while counterfeiting was cited as a problem, it did not appear to be an extreme case. So far, there have been very few cases relating to IP infringement. Since the creation of the Commercial High Court in May 2008 no IP cases have been brought before them. The situation may soon change, however, especially with the new IP law. During the interviews for the needs assessment exercise, the low level of IP cases previously was attributed to the level of damages payable for infringement and lack of awareness. In criminal cases, the lack of testing and detection ability meant that it was difficult to surmount the requirements of proof in court. Beyond the national concerns, another key concern highlighted in the interviews was the impact of Rwanda's entry into the EAC market. Anecdotal evidence suggests that the country is facing increasingly complex cases and that Rwanda exporters have to deal with issues of infringement, particularly with respect to trademarks in other EAC countries.

## ***2.5 Science, technology and innovation: context and indicators***

Rwanda, with its low human development and per capita income has, as a corollary, a weak foundation of science, technology and innovation (STI). This is a challenge that is faced by many other countries in a similar economic situation. The country faces significant economic and structural limitations arising from heavy reliance on certain commodities, limited physical and communications infrastructure as well as institutional limitations.

From an innovation perspective, there are also a number of specific characteristics of the system in Rwanda. These characteristics include:

- A weak innovation system with few resources devoted to innovative activities both in the public and private sector.
- A system dominated by minor and/or incremental innovations.
- The government having a major role in research and development (R&D) execution and funding.
- Significant levels of instability because firms are micro or small with macro-economic uncertainty limiting long-term innovative activity.

- Heavy reliance on informal practice that may be favourable for innovation but does not lead to systemic application.
- Government science and technology policies and programmes having a larger impact on innovation than activities and strategies in the private sector.
- The dominance of externally controlled firms in high value sectors meaning that local enterprises have less decision-making powers related to innovation.

Rwanda's National STI Policy, which takes into account this context, has the principal objective of 'Integrating science, technology, scientific research and innovation in a framework that shall include capability building, technical transfer initiatives and the promotion of innovation, in the context of issues facing Rwanda.' The specific objectives and strategies consist of:

- **Knowledge acquisition** – reinforce science and technology teaching and resources at all levels of education.
- **Knowledge creation** – invest in training and development of international partnerships and equipping research institutions.
- **Knowledge transfer** – linking research and technology development to industry, economy and community.
- **Innovation culture** – establishing business enterprises centres and district innovation centres.

Efforts are already underway to implement this policy. In particular, the Centre for Innovation and Technology Transfer (CITT) has been established, public expenditure for science laboratories increased, and programmes on ICT introduced in universities. The government is also introducing and restructuring technical and vocational education and training, and increasing enrolment and graduation from primary to higher levels of education. The number of agricultural research centres are also planned to increase from five to eight by 2012 supported by increasing numbers of researchers and technicians.

In order to alleviate the infrastructural challenges and support private sector development, the government has prioritised transport, energy, habitat, ICT and meteorology. Finally, in collaboration with the World Bank, the country has adopted a two-stage programme for knowledge transfer: needs assessments and action plans followed by financing and implementing the action plan outlined in the needs assessments. The programme focuses on priority areas, including agricultural productivity, geothermal energy and geosciences, appropriate technology, food processing and food technology, clean drinking water and sanitation, and bio-fuels.

### 3. Vision, mission and objectives

#### 3.1 Vision and mission of the Intellectual Property Policy

The vision of Rwanda's Intellectual Property (IP) Policy is:

*“An environment in which the Rwandan sectors of business, Government and culture, create ideas and innovations that are protected in a way that ensures the greater prosperity of the Rwandan people, while making optimal use of international technologies to promote growth and productivity for the whole Rwandan nation.”*

The mission of Rwanda's Intellectual Property (IP) Policy is:

*“To ensure that national IP laws, institutional practices and strategies in public research institutions and industry are developed and implemented in a manner that contributes to building Rwanda's technological base and cultural industries and that advancements in science and technology benefit society.”*

In the context of the existing low educational, institutional and technological base, the focus should be on how to promote technological learning, adaptation and diffusion as well as recognising the contribution of traditional knowledge to the socio-economic wellbeing of the country's population.

An effective IP Policy is one which recognises the differences in the rationale and need for different categories of IPRs and the sectoral impacts of the various rights and which seeks to strike the correct balance between:

- providing incentives/inducement for innovation and creativity and availability and access to the fruits of science, technology and innovation (STI);
- protection and enforcement of IPRs and the need for technological diffusion to support further innovation; and
- national development interests and the interests of foreign trading, development and strategic partners and investors.

This IP Policy is an instrument to direct the country's efforts to facilitate absorption, adaptation, and assimilation of existing scientific and technological advances while ensuring that the technological, economic and social structures in the country incorporate built-in inducement and capacity to generate new knowledge, technologies and cultural creativity in accordance with the country's developmental needs.

### ***3.2 Objectives of the Intellectual Property Policy***

The IP Policy is aimed at providing guidance and a road map to ensure that the IP laws, practices and strategies in Rwanda support and facilitate the achievement of the country's high-level vision and targets. For Rwanda, the key is to facilitate technological learning. To do this requires a conducive national and international environment. Consequently, this IP Policy is predicated on six interrelated objectives. These are:

- I. Increasing technological literacy and advanced scientific and technological skills that in turn would increase the innovation capacity.
- II. Promotion of innovation and creativity including minor and incremental innovations to provide an opportunity for the largest number of individuals and firms to participate in innovation.
- III. Increasing access to foreign and local technology by local firms and research institutions.
- IV. Improving access to IP-based essential goods and services especially health and food.
- V. Facilitating investments in innovative and creative activities.
- VI. Enhance the protection of traditional knowledge and facilitate equitable access to genetic resources and benefit-sharing.

#### **POLICY OBJECTIVE I: Increasing technological literacy and advanced scientific and technological skills**

Advancement of scientific and technological skills is among the key goals of Vision 2020. The focus on technology and science literacy will be to enable the individuals to understand not only the science but also the society and culture in which the science will be deployed. Furthermore, the uptake of scientific and technological solutions by society significantly depends on the general level of education in society.

This literacy will entail the following:

- Enhancing access to scientific learning and education materials and facilities, including textbooks, scientific journals and databases as well as ICT, such as computer programmes.
- Encouraging local publishing in science and technology fields.
- Increasing the number of enrolments in science and technology.

- Putting in place policy incentives to encourage brain gain.
- Developing programs that can promote innovation and IP culture.
- Developing programs to promote the uptake of scientific and technological solutions by potential users, such as enterprises, government organisations, research institutions, and society.

**POLICY OBJECTIVE II: Promotion of innovation and creativity including minor and incremental innovations by nationals**

The focus here will be to facilitate the acquisition and exploitation of IPRs over minor and incremental innovations so as to encourage the widest participation in innovative and creative activity including in the informal sector. The participation in the innovative enterprise and creative industries by the largest number of Rwandans possible is the only sure way to boost innovation and creativity economy-wide. With a low starting-base, the country cannot afford to pick and choose winners based on high-end technological standards when solutions for many of the problems in Rwandan society may require adaptations of existing technology or solutions developed by cultural industries. As a corollary, the costs of obtaining and enforcing rights over these minor and incremental innovations must be such that it is affordable and practical.

**POLICY OBJECTIVE III: Increasing access to foreign and local technology by local firms and research institutions**

The main aim, under this objective, is to:

- Promote the utilisation of the patent information system which will provide access to new technological information and encourage adaptation of foreign technologies to local needs.
- Develop mechanisms to promote technology transfer from foreign firms and institutions. Technology transfer is critical in Rwanda’s efforts to climb the knowledge and technology ladder.
- Put in place mechanisms to promote technology transfer from local research institutions to industry, such as research-industry collaboration.

**POLICY OBJECTIVE IV: Facilitating access to IP-based essential goods and services especially in the health and food sectors**

The principal aim is to ensure that essential IP embedded goods and services, especially with respect to health and food products, as well as agricultural inputs, are available and accessible at an affordable cost to the population. Ultimately, science and technology matters only if it can be applied to better the lives of the population by helping improve health, education, agriculture, water quality, sanitation etc. Consequently, the use of flexibilities to ensure availability and access to IP-based products and services to the largest number of people in the population determines whether the IP Policy is an instrument for poverty reduction.

This will entail:

- Awareness creation among the policy-makers, the consumers and relevant government organs and institutions on exceptions in IP laws and the TRIPS flexibilities.
- Promoting a better understanding of the IP system by the consumers and show advantages of the protection and promotion of national products and services in competition with foreign products and services.

**POLICY OBJECTIVE V: Facilitating investments in innovative and creative activities and profit**

The main aim here is to promote an understanding of IPRs and access to administrative or judicial services to enforce IPRs in a manner that balances the needs of access and competition and profit. The focus should be on

eliminating unfair competition and ensuring fair remuneration to right holders. The profitability of the innovative and creative industry is an important factor in encouraging investments of both financial and human capital. As such, while ensuring access to the result of innovation and creativity is critical, the enforcement of IPRs must ensure fair and equitable remuneration to innovators and actors in the creative industries. Some of the key measures required will include establishing workable linkages between research and development institutions, universities and the private sector and promoting development-focused IP courses at all levels of education.

#### **POLICY OBJECTIVE VI: Enhance the protection of traditional knowledge and facilitate equitable access to genetic resources and benefit-sharing**

The main aim here is to promote and support the development of relevant legal systems and institutions for the protection of traditional knowledge and to ensure prior-informed consent and benefit-sharing for access to genetic resources in Rwanda. The legal systems and institutional framework should among others be aimed at:

- recognising the value of traditional knowledge and responding to the needs of the knowledge holders;
- promoting respect for traditional knowledge and its conservation and preservation including repression of unfair and inequitable uses of the knowledge;
- promoting innovation and creativity and overall community development including facilitating legitimate trade in traditional knowledge-based goods and services; and
- Preventing biopiracy.

## **4. Analysis**

The TRIPS Agreement calls on countries to enforce comprehensive minimum standards of IPR protection on a nondiscriminatory basis. It also has provisions relating to the transfer of technology:

- Article 7 notes that IPRs should contribute to the promotion of technological innovation and the transfer and dissemination of technology.
- Article 8.2 recognises that countries may wish to adopt policies to prevent the abuse of IPRs by rights holders or the use of practices that “adversely affect the international transfer of technology.”
- Article 66.2 calls on developed country WTO members to provide incentives to their enterprises and institutions to promote technology transfer to least-developed countries (LDCs).

For a LDC like Rwanda, utilising these provisions in order to promote technology transfer will be crucial to the success of its IP Policy. For this to take place, there must be an understanding of how technology transfer takes place and how Rwanda can facilitate this transfer.

### **4.1 Technology transfer**

Market transactions in technology are hampered by three major problems: (i) asymmetric information, (ii) market power, and (iii) externalities.<sup>4</sup>

#### **(i) Asymmetric Information**

Technology transfer involves exchange of information between those that have it and those that do not. The former cannot fully reveal their knowledge without destroying the basis for trade, creating a problem of asymmetric information—buyers cannot fully determine the value of the information before buying it. This can lead to large transaction costs that stifle market-based technology transfer. In the international context,

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<sup>4</sup> Hoekman, Maskus and Saggi (2004) “Transfer of Technology to Developing Countries: Unilateral and Multilateral Policy Options” Working Paper PEC2004-0003, Institute of Behavioral Science, University of Colorado at Boulder

information problems are more severe and the enforcement of contracts more difficult to achieve. As a result multinational firms are often seen to establish foreign subsidiaries due to the difficulty of using markets to profit from the technologies they own.

## **(ii) Market Power**

Owners of new technologies typically have substantial market power resulting from 'lead time' and patents and other IPRs. This necessarily implies that the price of technology will exceed the socially optimal level (i.e., marginal cost). While this divergence between price and cost allows innovators to profit from their innovation, it implies a reduction in the national welfare of those importing technologies at least while the patents remain valid.

## **(iii) Externalities**

A major share of benefits to recipient countries of technology transfer is likely to arise from uncompensated spillovers (externalities). Positive spillovers exist whenever technological information is diffused into the wider economy and the technology provider cannot extract the economic value of that diffusion. Spillovers can arise from imitation, trade, licensing, FDI and movement of people.

## **Implications for policy**

These market failures imply a potential for policies to increase welfare by encouraging technology transfer. To be effective, policy must alter the incentives of agents that possess innovative technologies in order to ensure that they transfer these technologies. In practice this means encouraging the means for transfer - licensing and arms length trade; and foreign direct investment (FDI).

## ***4.2 Technology licensing***

Data on the value of technology flows from Hoekman et al.<sup>5</sup> shows that while high-income countries (in 2001) account for 72 per cent of FDI flows, they account for 96.7 per cent of royalty flows related to technology licensing. The remainder is accounted for by upper middle income countries and to a smaller extent lower middle income countries. Low-income countries are simply not players in the transfer of technology by licensing. This suggests that FDI may be a more fruitful route.

## ***4.3 Foreign direct investment (FDI)***

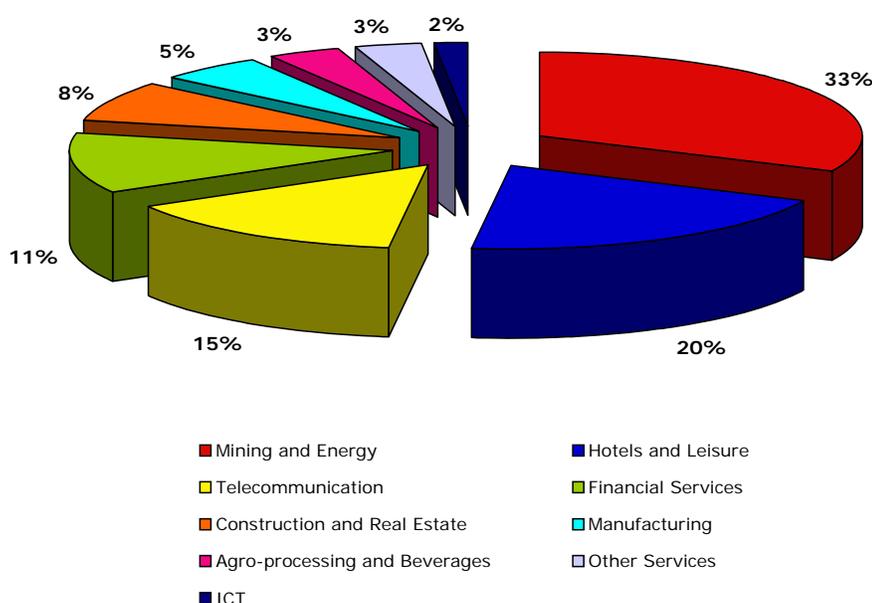
Sub-Saharan African (SSA) states accounted for 0.8 per cent of FDI flows in 2001, down from 1.2 per cent in 1970. The decrease in FDI flows has seen a concomitant fall in the transfer of technology associated with FDI flows. This is extremely damaging for SSA countries and has resulted in the deindustrialisation of many of these states. Rwanda should be at the vanguard of reversing this trend and ensuring that together with FDI comes technology.

Rwanda now has one of the most open foreign direct investment (FDI) regimes in the region. The laws and regulations do not place restrictions on FDI entry and establishment or any discrimination on incentives and facilities enjoyed by local investors. All foreign investments are allowed without screening or restriction of amount or sector, and foreign investors are granted national treatment for most intents and purposes. The levels of investment, though relatively small by global standards, have been rising. Net annual FDI inflows averaged RWF20 billion in 2001-2004 and then ten times that at RWF 225 billion in 2005-2008.

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<sup>5</sup> Ibid.

*Figure 1: Sectoral distribution of FDI projects in Rwanda 2000-2009*



As shown in Figure 1, Rwanda's FDI is focused in service sectors, with only 5 per cent going to manufacturing, although 11 per cent and 15 per cent have come in the hi-tech sectors of financial services and telecommunications respectively.

Rwanda provides a number of incentives to both local and foreign investors. This is an important avenue that can be used strategically by the government to direct FDI towards innovation and to the creative industries. Such an approach would buttress the specific IP related strategies linked to the objectives of encouraging innovation and creativity, facilitating technology transfer and investments.

## 5. Preferred Option

The preferred option for this policy can be broadly split into two key areas: IPR administration and IPR enforcement. The former should be undertaken largely by RDB, while the latter will involve the use of the Customs Office, Police and the Commercial Courts. This should be overseen by the new multi-stakeholder body, the Rwanda Development and Intellectual Property Forum (RDIPF).

### 5.1 IP administration

The administration of IP involves a set of technical and administrative tasks relating, among others, to:

- receiving, examining and granting or refusing applications for IP titles;
- processing of renewals such as in the case of trademarks and industrial designs;
- addressing opposition applications such as in the case of patents and trademarks;
- establishing and managing financial procedures and mechanisms for collection of fees;
- maintaining records of granted IP rights as well as archiving; and

- establishing procedures for, and facilitating search of the IP registers.

IP administrations may also have administrative powers or facilitating role relating to dispute settlement such as when the office serves as a secretariat for an IP Tribunal or reviewing technology transfer licenses. The administration may also have training and public awareness functions. Finally, IP administration may also be required to provide business support services such as specialised patent information services and in some countries, such as Denmark, the patent and trademark office provides a platform for an IP market place for patents. This is a service that facilitates buying and selling of patents.

IP rights administration is therefore a complex and expensive exercise requiring significant technical capacity, human and financial resources as well as infrastructure. In a small country like Rwanda, the demands to undertake all these tasks can be overwhelming.

The creation of the RDB is likely to improve the effectiveness and efficiency of IP administration in Rwanda. The merging of a range of services in one agency is also likely to reduce the overall costs of IP administration since many services such as finance, automation etc., would be bundled. However, with a new institution with new staff and systems, the technical and financial assistance needs are huge. The priority needs in this regard relate to human resource development, automation, accession to the Regional Intellectual Property Organization (ARIPO or OAPI) and access to key international repositories and databases.

*(a) Human resource development*

The human resource development for the IP section of RDB will be key to its success. The first important steps have been taken in recruiting staff attorneys to run the section. A key immediate need requiring technical and financial support will be on-the-job training for the new staff including missions to other IP offices with established systems. Over time, the staff will also require to take advanced courses in IP administration and management.

In the medium-term, support is needed to assist the RDB quantify its staff needs with respect to IP administration. Though the optimal level of staff compliment is still unknown, it is clear that there will be need to enhance the staff compliment to ensure that the IP section of RDB can run efficiently and, in particular, that RDB can offer the relevant intellectual property rights information and business support services. Such new staff will also require training and exposure.

*(b) Computerisation and IT Support for the RDB and access to international databases*

Computerisation of documentation and operations is a key priority for the IP section of RDB. Computerisation will increase efficiency, transparency and accessibility of reliable information. While consultancy services are already being procured for the development of a comprehensive online IP database, there will be further short and medium term needs. In particular, technical and financial support is required for procurement of equipment and specialised software; to cover the costs of scanning and archiving the old paper records; training of staff; and to buy access to relevant international repositories and databases.

*(c) Support for accession process to Regional Intellectual Property Organization and other International Treaty/Agreement related to IPRS.*

The intention to join the regional and international organizations / Treaties and Agreements so as to maximise the internal capacity in Rwanda needs to be actualised and integrated at this early stage of RDB. In this context, technical and financial support will be needed to help the RDB, MINICOM and the Ministry of Foreign Affairs undertake national consultations including commissioning any studies, if necessary, and to undertake the necessary procedures for accession.

## 5.2. IP enforcement

The TRIPS Agreement includes detailed rules on the minimum enforcement requirements at the national level in WTO members.<sup>6</sup> In general, there is a broad agreement among WTO Members that the IP enforcement measures put in place should be effective. However, this understanding is circumscribed by three important principles. It is in the context of these principles that enforcement provisions under Part III of the TRIPS Agreement should be understood.

The first principle is the recognition that “intellectual property rights are private rights.”<sup>7</sup> This means that since IP enforcement relates to private property, except in criminal cases, it is not the responsibility of the state to defend each right but rather to provide the means for individuals and firms to enforce their rights. The second principle is the recognition that while the TRIPS Agreement is intended to provide effective and appropriate means of enforcing IP, the structures to be put in place must take “into account differences in national legal systems”<sup>8</sup> and recognise the right of each WTO member “to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.”<sup>9</sup>

Finally, is a principle based on the basic rule of treaty interpretation which requires that treaty interpretation must be done in light of the object and purpose of such a treaty. The purpose and objective of the TRIPS Agreement, as set out in Article 7, is the protection of IP in order to contribute to technological innovation, the transfer and dissemination of technology. This means that enforcement provisions should help ensure the achievement of these objectives. When dealing with IP enforcement, it is particularly important to remember that an innovator today may be an alleged infringer tomorrow and *vice-versa*. Consequently, except for clear criminal cases, IP disputes are disputes between legitimate businesses which all contribute to Rwanda’s economy.

A number of priority technical and financial cooperation and capacity building needs have been identified by key stakeholders. These related to training, equipment for detection and testing, public awareness and resources for the commercial courts.

### (a) Public awareness campaigns

There are both short-term and medium-term needs related to public education and awareness. In the short-term technical and financial support should be directed to developing and delivering programmes about the importance of innovation and creativity for the achievement of Vision 2020 and the goals of EDPRS, the role of IP in the wider scheme and the provisions of the new IP Law. Particular emphasis will have to be given to flexibilities, safeguards and exceptions. In the medium-term, technical and financial support will be needed to develop targeted programmes for the private sector and professional bodies, such as the law society, as well as the media.

### (b) Training for enforcement agencies

Taking into account that the police, customs officials and judicial officers have many other responsibilities, there is a clear need for equipping key officials with knowledge about basic IP concepts including the use and importance of flexibilities, the rights and obligations of rights holders and third parties under the law and, in the case of customs and police, detection methodologies.

With the increasing complexity of the cases that the enforcement agencies have to deal with there is also a clear need for technical and financial support for advanced specialised training and courses for the police, customs authorities and the judiciary. In the medium to the long-term support will be required to enable the relevant officials undertake refresher courses and courses in new detection and testing methodologies.

### (c) Detection and testing equipment and manuals for key agencies

<sup>6</sup> The whole of Part III of the TRIPS Agreement, containing 21 articles out of the Agreement’s 72 articles, relates to enforcement.

<sup>7</sup> See the Preamble to the TRIPS Agreement, para 4.

<sup>8</sup> See para 2(c) of the Preamble to the TRIPS Agreement.

<sup>9</sup> Article 1.1 of the TRIPS Agreement.

In the medium to the longer-term, financial and technical support is required to purchase and maintain basic detection and testing equipment for the police, customs office. Additionally, support will be needed for the development of IP enforcement manuals for all the key agencies. Such manuals would provide a background to the law and international regulations, best practices and procedures in detection and testing, the rights and obligations of complainants and third parties and procedures for seizure and destruction of infringing goods as well as key distinctions between criminal cases and civil commercial cases. These manual could also include information regarding any common procedures or coordination requirements in the context of the EAC customs procedures.

*(d) Access to jurisprudence and research resources for the Commercial Courts*

The court system plays an important role in arbitrating claims related to IP. In Rwanda, as part of the comprehensive commercial law reform a Commercial High Court has been set-up which will hear all commercial cases including most IP cases. As already noted, while the court is yet to hear any IP cases, the enactment of the new IP Code coupled with increasing private sector and public awareness is likely to lead to a growing number of IP related cases. A key need for the court, in addition to training for judges, relates to access to jurisprudence and other reference materials. While this need may be partly addressed by the establishment of an IP resource and information centre at MINICOM, the special needs of the High Court are unlikely to be fully addressed by the national reference centre. A special IP section will be required to be set up in the Commercial Court library. This will require financial support not only for the purchase of some hard copy reference materials but also subscriptions to key legal resources.

## **6. Stakeholders' views**

The need to develop a special legislative and institutional framework for the protection of traditional knowledge and to ensure prior-informed consent and benefit-sharing for access to genetic resources in Rwanda was emphasised as a priority need by various stakeholders at the national stakeholder workshop. The legal systems and institutional framework needs to be aimed, among others, at: recognising the value of traditional knowledge and responding to the needs of the knowledge holders; promoting respect for traditional knowledge and its conservation and preservation including repression of unfair and inequitable uses of the knowledge; promoting innovation and creativity and overall community development including facilitating legitimate trade in traditional knowledge-based goods and services; and preventing biopiracy.

The new Rwanda IP Law mandates the development of a special law on traditional knowledge and genetic resources. To be able to develop a comprehensive law will a national stakeholder consultations and the development of the legislative framework all of which will require technical and financial assistance. To ensure that the resulting legislative and institutional framework is comprehensive and fit for purpose the technical assistance should be provided by an interdisciplinary team of experts.

Stakeholders also mentioned the need for technical and financial assistance to train the representative of the key stakeholders within government and in the private sector, research institutions and civil society in basic concepts around innovation, IP and creativity, including the use of flexibilities in international treaties was emphasised by numerous stakeholders. Equally, many stakeholders stressed the need for technical and financial assistance to support national public awareness programmes delivered through radio, television and other media. This needs to happen in the short-term.

In the medium-term, the priority needs to be on the development of advanced tailor-made courses on development, innovation and IP for: government officials in all the key ministries and agencies particularly MINICOM, Ministry in charge of Culture, Ministry in charge of Science and Technology and RDB; senior industry managers and managers of the key scientific institutions; and for IP teaching in law, economics, science and management faculties at the university.

To ensure continued education and capacity development among governmental, private sector, research and civil society stakeholders as well as to support research and policy analysis in the longer-term, the need for

establishing an IP resource and information centre was identified as a priority. Technical and financial assistance will therefore be needed to establish such a resource and information centre at MINICOM. Such a centre would provide services to both government officials and other stakeholders including researchers.

## **7. Implementation plan**

An implementation framework for this Policy will require the collaboration of a number of stakeholders. Annex B provides the initial framework with responsibilities and timeframes. Furthermore, the achievement of the IP Policy objectives will require setting out:

- institutional development and policy coordination;
- national legislative development and review;
- engagement in regional and international IP negotiation processes and organisations;
- obtaining needs-based and coordinated technical assistance and capacity building; and
- a strategy for impact assessment and policy review.

### ***7.1 Institutional Development and Coordination Framework***

The implementation of an IP Policy aimed at supporting companies' STI and development goals requires a set of government / public institutions that act in a coordinated and reinforcing manner. A multi-stakeholder platform for coordination is therefore critical. Rwanda already has all the relevant public and private sector institutions as well as links to the relevant international organisations. In this context, it is proposed to convert the previous Steering Committee on IP to the Rwanda Development and Intellectual Property Forum. The Forum should be co-chaired by MINICOM, MINISPOC and the Rwanda Science and Research Council (RSRC). Its main mandate would be to coordinate the implementation of this policy, evaluation and review. The initial members of this Forum could include the institutions listed in Annex A to this Policy.

### ***7.2 National Legislative Implementation and Review***

Alongside this Policy is the new IP Law which is aimed at modernising the IP system, improving enforcement and ensuring that Rwanda complies with its international treaty obligations. To achieve the stated IP Policy objectives will require the development of the remaining sets of laws such as those related to traditional knowledge and genetic resources and a strategic approach to the key categories of IP. For purposes of the policy objectives on IP, the critical IP categories are: utility models, copyright and patents. The rules on unfair competition are also of particular importance. Flanking policies and legislation will also be required for implementation of the policy objectives. Key relevant flanking policies and legislation include those related to investment and government procurement.

#### ***7.2.1 Development of a legislative framework for traditional knowledge and genetic resources***

In order to meet the aims of policy objective VI a legal regime and institutional framework needs to be developed for the protection and promotion of traditional knowledge and to address access and benefit-sharing with respect to genetic resources. The Rwanda IP Law already provides a mandate for the development of a special law on traditional knowledge and genetic resources. The next step should be the initiation of a national stakeholder consultation and the development of the law through technical and financial assistance. To ensure that the resulting legislative and institutional framework is comprehensive and fit for purpose the technical assistance should be provided by an interdisciplinary team of experts.

#### ***7.2.2 Strategy towards the implementation of key categories of IP and on enforcement***

##### **(a) Utility models**

In Rwanda, utility models may provide the most important avenue for using IP to support development. Utility models are particularly relevant in achieving policy objective II – encouraging minor and incremental innovation and creativity. It is also an instrument which Rwanda can use as it wishes since there are no TRIPS or other international obligations that restrict state action.

The Rwanda IP Law includes provisions which permit the granting of utility model certificates for inventions that are new and industrially applicable. There is no requirement of inventiveness. The inventions covered are technical innovation. The novelty test is, however, the same as that required for patents, i.e., -universal and absolute novelty. Enablement and best mode disclosure requirements, the definition of person skilled in the art, procedures for amendment and withdrawal of application and the rights conferred by utility model are also the same as that of patent. The duration of protection is for ten years.

To ensure that the utility model provisions in the law serve to encourage minor and incremental innovation and to bring as many players as possible into the innovation circle will require innovative interpretation and possibly revision in the regulations of the IP Law. This is critical because one of the main reasons why utility models are critical for many countries is to enable low cost entry into the IP system by small players. In developed countries utility models are mainly aimed at small and medium enterprises (SMEs). In Rwanda, however, their application is much broader since most firms and entities are small or micro.

### **(b) Copyright**

The implementation and development of copyright law is particularly relevant to meeting policy objectives I and V. In the context of policy objective I, the focus will be on the treatment of copyright in libraries, educational and teaching institutions, use by visually impaired and other disabled people, computer programmes, and technological protection measures (TPMs) as well as issues touching on folklore and public domain. For these purposes, libraries, educational institutions including specialised institutions such as schools for the blind and the general public should be sensitised to the permissible uses of copyrighted works to encourage and support education, including cultural education, and entrepreneurship. In this regard, the following should be noted:

- Libraries and archives: The IP Law allows the making of copies by reprographic reproduction in order to preserve and replace a copy, including replacement of a copy in the permanent collection of another similar library or archive as well as making copies from library materials for personal use of natural persons for the purposes of study, scholarship or private research.
- Education: The IP Law allows the use of published works for teaching purposes by way of illustration, broadcasting or sound or visual recordings. The exception also covers reprographic reproduction of various articles published in magazines or gazettes, short extracts of works or a short creative work for teaching or for examinations in educational institutions which do not serve direct or indirect commercial gain. Public performance of a work is permitted for teaching activities where only the staff and students or the parents of students or other people so linked directly to activities of the establishment are entitled to attend to the public performance.
- Computer programmes: The IP Law provides that the reproduction, in a single copy, is permitted for use with a computer for the purpose and extent for which the programme has been obtained, for archival purposes and for the replacement of the lawfully owned copy. This exception for reproduction also applies for adaptation of computer programmes in a similar manner. Temporary reproduction is also permitted where it is made in the process of a digital transmission of the work or an act of making a digitally stored work perceptible, or such use is caused by authorised person or person making use of personal use exception and where temporary reproduction is an accessory to transmission or making perceptible of protected work.
- Visually impaired persons: The law permits the free reproduction of a work, specifically for visually impaired persons in an alternative manner or form which enables their perception of the work. The exception also includes the distribution of the copies, including copies made outside Rwanda,

- Folklore: Expressions of folklore and the works of the public domain are considered part of the national culture and heritage of Rwanda according to the IP Law. Works deriving from Rwandan national folklore enjoy copyright protection as derivative works and collection of works, without prejudice to any protection of a pre-existing work or expression of folklore incorporated in or utilised for the making of such a work. The use and any transfer of ownership of work derivative from Rwandan national folklore for profit making purposes is in return for payment of royalties. 25 per cent of the amounts collected from works deriving from Rwanda's national folklore are reserved to activities of creative works promotion.
- Technological Protection Measures (TPMs): The Rwanda IP Law prohibits circumventing TPMs or to produce, import, distribute, sell, rent, advertise for sale or rental, or possess devices, products, components or services for commercial purposes that are promoted, advertised or marketed for the purpose of circumventing TPMs. These provisions will have to be enforced in a balanced manner taking into account the policy objectives related to access to technology, technological learning and skills upgrading and access to IP-Based essential products.

### **(c) Patents**

The approach to patents under the Rwanda IP Law follows the standard approach in line with the requirements of the WTO's TRIPS Agreement. The statute defines the criteria for patentability, the scope of patentable subject matter, the rights conferred by a patent and exceptions. While the new law and the planned accession to the African Regional Intellectual Property Organisation's (ARIPO) Harare Protocol, accession to the international Treaties / Agreements on Patent, Industrial Designs, Trademarks, etc. is likely to result in the increase of patent applications, considering the history of use of patents in Rwanda, this is unlikely to be an immediate effect. In implementation, the emphasis will, in the short to medium-term, be on ensuring enabling disclosure where patents are applied for and on exceptions to support the objective of accessing technology by firms and research institutions and that of access to essential goods and services. In this regard:

- The exclusion of pharmaceutical products from patentability in accordance with the WTO Decision providing transition period for LDCs until, at least, 2016 will be maintained.
- Consideration should be given to retaining patent examiners to enforce the requirements of enabling disclosure under the IP law in key sectors such as agriculture even though Rwanda does not intend to have routine examination of all patent applications. This will promote technology transfer and dissemination.
- The research and experimental use exception, including for commercial purposes and for public not-for-profit use as contemplated under the IP Law should be encouraged in both public and private sector institutions. Restricting the exception to not-for-profit entities or activities would be counter-productive. The exception should be aimed at facilitating a broader set of technological activities related to the application of knowledge to particular problems.
- To support transfer of technology, specialists should be retained to scrupulously examine the terms and conditions of licensing agreements to ensure that such licenses do not restrict competition or negatively affect the government's effort to boost technology transfer and that there are no prohibited clauses as stipulated in IP Law. Such specialists, who should also perform surveillance functions, could be attached to MINICOM, RDB or the RSRC. Continuous monitoring of the behaviour of parties is important since parties might present legally permissible contract to the authorities but later enter into side agreements that defeat government objectives.
- Where applicable, and in appropriate cases, compulsory licenses should also be considered in cases of dependant patents and to remedy abuse and enforce competition regulations. Guidelines on royalty

#### **(d) Unfair competition**

The Rwanda IP Law also regulates unfair competition. These laws are particularly important with respect to trademarks and trade secrets as well as in sectors such as music. Under the law, acts causing confusion with respect to and discrediting of another's enterprise or its activities constitute acts of unfair competition. Equally, damaging and dilution of another's goodwill or reputation by lessening the distinctive character or advertising value of a trademark, trade name or other business identifier, the appearance of a product or the presentation of products or services or of a celebrity or well-known fictional character are acts of unfair competition. Technical know-how and secret information are also protected against unfair competition.

In Rwanda, these rules are particularly helpful considering that most businesses are small and there are a lot of activities in the informal sector. Unlike most of the various IP categories where registration is required and the standards of proof in infringement cases are significant, unfair competition rules offer a simpler mode of protection that can also encompass a range of interactions in the cultural industries. For their effective operation a reliable contract system backed by efficient judicial institutions is critical.

#### **(e) Enforcement**

The enforcement of IPRs is an important part of any IP regime. It is only through appropriate enforcement, for example, that Rwanda can encourage minor and incremental innovation and the development of the creative industries and facilitate investments in innovative and creative activities. Consequently, it must be recognised that enforcement measures, applied reasonably and in a balanced way, have benefits for local inventors, innovators and creative communities that rely on various forms of IP.

The enforcement provisions under the Rwanda IP Law provide for civil action against infringement of rights conferred by IPRs, discovery of evidence and right of information, provisional measures and injunction, criminal penalties in certain cases and special border measures. These provisions will have to be implemented in an appropriate and balanced manner to ensure that they equally support the needs of encouraging innovative and creative activities and investment and the needs to facilitate access to technology and essential goods and services.

#### **7.2.3 Flanking policies and legislation**

The achievement of the IP Policy objectives will also require strategic implementation of flanking policies and legislation. Two particular areas are priority. These include investment policies and government procurement.

##### **(a) Investment Policy**

Rwanda has one of the most open foreign direct investment (FDI) regimes. The laws and regulations do not place restrictions on FDI entry and establishment or any discrimination on incentives and facilities enjoyed by local investors. All foreign investments are allowed without screening or restriction of amount or sector, and foreign investors are granted national treatment for most intents and purposes. Rwanda provides a number of incentives to both local and foreign investors. This is an important avenue that can be used strategically by the government to direct FDI towards innovation and to the creative industries. Such an approach would buttress the specific IP related strategies linked to the objectives of encouraging innovation and creativity, facilitating technology transfer and investments.

##### **(b) Government procurement**

Resources permitting, governments have the option of using numerous monetary tools, subsidies and other fiscal measures to induce some change or stimulate the production, supply and consumptions of certain

technologies, goods, and services. More specifically, the government can use its purchasing power to promote services that will be developed for uses beyond government and advance the production of certain goods and services for solutions to existing problems. In this context, government procurement rules can be strategically utilised with respect to promoting IP and innovation.

In Rwanda, procurement should be strategically used in order to promote local brands, inventions and creative works. The government should also adopt proactive measures with respect to dealing with the IP created by contractors working for the government. In such cases, the government has the option of taking the ownership of the IP created or share it with the contractor. Ownership of the IP by the government allows the government to license or determine the future exploitation of the IPRs, in particular, where the government wants to transfer the know-how and technology to potential local suppliers or in cases of public interest, such as supply of educational materials.

### ***7.3 Strategies for Participation in International IP Negotiations and Organisations***

While IPRs remain territorial, the nature of the rights and the requirements for enforcement are today largely determined by the requirements of multilateral treaties and decisions in international organisations. The TRIPS Agreement and the various WIPO administered treaties, to which Rwanda is party, and the decisions in WTO, WIPO as well as other international agencies. The achievement of the overall policy goal in the area of IP and the realisation of the specific policy objectives set will, therefore, both depend on the nature and requirements of any new treaties as well as Rwanda's engagement in the relevant organisations. In particular, the objectives related to facilitating the upgrading of technological skills, facilitating access to foreign technology and access to essential goods and services will significantly depend on the international environment.

Though Rwanda has been an active participant in the Council for TRIPS at the WTO and, at times in WIPO, the realisation of its IP Policy objectives will require a more active engagement in IP negotiations in WTO, WIPO and IP related policy-making in WHO, FAO, UNESCO and WCO, among others. Considering, the stated priorities in health and agriculture particular emphasis, in the short-term should be focused on the processes linked to the implementation of the WIPO Development Agenda, the WHO Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property Rights and the implementation of FAO's International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). In terms of engagement in negotiations, Rwanda's active participation will be helped by working through and with the African Group in the various agencies as well as participating in various issue-based alliances – South-South and North-South.

Beyond shaping policy and ensuring that international processes reflect the requirements of Rwanda's policy objectives, such engagement will ensure that Rwanda can procure the needed technical and financial assistance from the international partners to pursue its IP objectives.

### ***7.4 Needs-based and Coordinated Technical Assistance and Capacity Building***

The implementation of Rwanda's IP Policy objectives will require significant scaling-up of the country's technical and human capacities on IP as well as the financial resources. While the country has some level of technical and human capacity in this area and has shown itself ready to commit financial resources to STI, additional technical, human and financial resources will still be required. To procure the relevant and suitable assistance requires Rwanda not only to be proactive in seeking this assistance but having clarity on its priorities and coordinating delivery and evaluation. The needs assessment diagnostic, which has already been undertaken with the support of the International Centre for Trade and Sustainable Development (ICTSD), has laid a firm basis for going forward. The needs assessment should be submitted to the WTO Council for TRIPS as early as possible. The implementation of the resulting programme will be a critical component in helping achieve the various IP Policy objectives.

## **7.5 Impact Assessment and Periodic Policy Review**

The knowledge goods sector, which is the most dynamic in terms of potential growth, is also partially resistant to any consensus-based economic analytical framework. In this context, Fink and Maskus<sup>10</sup> conclude that “although the existing economic literature on IPRs provides some useful guidance to policymakers in developing countries, there is still a lot we do not know.”

Because the impacts of the different categories of IPRs are dynamic, and will change over time the implementation strategy for the Rwanda IP Policy has to include impact assessment mechanisms as well as be subject to periodic review. The impact assessment and review should evaluate and assess the implementation of the policy as well as the Rwanda IP Law. The results of the impact assessment and review should provide the basis for policy refinements and adjustments to the implementation strategy as well as needed revisions to the IP Law and related laws such as on traditional knowledge.

Impact assessment and review should be carried out under the direction of the Rwanda Development and Intellectual Property Forum with the first impact assessment and review to be carried out two (2) years from the time of the launch of the Policy (2011). Thereafter the assessment and review should be carried out every four years with the third impact assessment and review timed to coincide with the end of Vision 2020.

## **8. Financial implications**

The financial implications of the Law and Policy will depend on the level of uptake of IP related activity. Technical assistance support will be required as set out in the Preferred Option section – this should ideally be located from international organisations. Dissemination of the Policy should be a priority of MINICOM, MINISPOC and RDB, and this activity should be secured from its own resources. In as much as cases go to the commercial courts, the justice system in Rwanda should require little in extra resource to undergo such cases. Support will be required for the justice system as well as police and customs for IP enforcement – again, where possible, this technical support should be secured from international organisations.

## **9. Legal implications**

The IP Law has been developed alongside this Policy. It sets out detailed requirements for the provision, enforcement and administration of IPRs. Key measures related to patents, utility models, industrial designs, marks, geographical indications and integrated circuits.

### **Copyright**

The provisions of the IP Law concerning the protection of literary, artistic and scientific works apply to a range of types of work produced by Rwandans or in Rwanda. This could include

- Conferences, speeches, lectures, addresses, sermons and other oral works;
- works expressed by writing (books, pamphlets and other writings) including computer programs;
- musical works with or without accompanying words;
- dramatic, dramatico-musical works;
- choreographic works and pantomimes;
- audiovisual works;
- works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;
- works of architecture;

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<sup>10</sup> Why we study intellectual property rights and what we have learned. Carsten Fink and Keith E. Maskus. 2005.

- photographic works; including works made by means similar to photographic process;
- works of applied art like as handicraft works or works produced by industrial process. Thus, protection of industrial designs is granted by the provisions of this Law relating to industrial designs;
- illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science;
- works deriving from Rwanda national folklore.

Subject to contrary provisions of the Law, the economic rights for copyright are protected during the life of the author and for fifty years (50) after his or her death.

The original owner of moral and economic rights is the author who has created the work. They have a number of specific rights under this ownership, including:

Subject to limitations mentioned by the provisions of this Law, the author of the work shall have the exclusive right to carry out or to authorize the following acts in relation to the work:

1. reproduction of the work;
2. translation of the work;
3. adaptation, arrangement or other transformation of the work;
4. rental of the original or a copy of an audiovisual work, a work embodied in a phonogram or a computer program;
5. communication to the public of the work by communication to the public of the work by distribution of the original or a copy of the work to the public by sale or other transfer of ownership;
6. public performance of the work;
7. communication to the public of the work by broadcasting; and
8. communication to the public of the work by wire or any other means.

### **Patents of invention**

An invention is patentable if it is novel (i.e. there is no prior art anywhere in the world), if it involves an inventive step (i.e. it is not obvious) and if it is industrially applicable.

The right to a patent belongs to the inventor. However, where the right to the patent is owned by an employer as part of a labor contract, the inventor is entitled to equitable remuneration taking into account the economic value of his invention.

In a patent application, the inventor must disclose his invention in a clearly, sufficient and intelligible manner and specify the scope of the desired protection. The invention must enrich existing technical knowledge.

The examination of applications shall begin with the allocation of a filing date. The filing date is very decisive in terms of evaluating novelty and serves as a basis for the priority claim. A patent is granted if the application meets the formal requirements. No substantive examination is carried out since this is a very complicated technical exercise that occurs in a limited number of developed countries. This Law provides for the revocation of a patent by the courts if the patent is granted while the invention does not meet the substantive requirements.

The patent grants the owner the exclusive right to use the patented invention throughout the territory of the Republic of Rwanda. Use without the consent of the owner constitutes an infringement and is punished by the courts. This right is very important since it allows the patent owner to obtain material benefits which thus reward his intellectual efforts and the investments made in the search to carry out the invention.

In certain cases, this law sets limits to the rights granted, including “the exhaustion of rights”. The exhaustion of rights guarantees the free movement of goods. Each WTO member State is free to determine the level of the

exhaustion of intellectual property rights (national, regional or international exhaustion). This Law opts for the international exhaustion of rights, as recommended to the least developing countries by the Doha Declaration on public health and the TRIPS Agreement adopted in November 2001 at the WTO Ministerial Conference in order to facilitate access to essential drugs by authorising parallel imports.

The patent shall be valid for 20 years on payment of an annual renewal fee. In addition, the law establishes a balanced system of rules for the granting of patent licenses.

### **Utility model certificates**

The encouragement of creativity and inventive activity shall be translated, at the level of small and medium-sized enterprises and crafts industries, by the development of a large number of very useful products, but which do not necessarily satisfy the rigorous criteria of a patentable invention. A utility model (or innovation) is therefore an invention with a lower inventive level in relation to a patentable invention.

The legal system of utility models is similar to that for patents, with a few exceptions:

- A utility model is protected if it is novel and industrially applicable. The inventive step requirement which applies to patents does not apply to utility models;
- The duration of a utility model is ten years with the possibility of renewal in the fifth year;
- The non-voluntary licenses for utility models are authorised only in cases of a lack of or insufficient use.

### **Industrial designs**

A design or model is the appearance or aesthetic aspect of an industrial or craft product. The design or model is registered if it is novel anywhere in the world. The right to the design shall belong to the creator.

A registration application indicates the kind of products for which the design or model is intended to be used. The examination procedure is similar to that for patents. An examination of novelty, which is the substantive requirement, is not therefore conducted.

The registration of a design or model grants the owner the exclusive right of use. Use without the owner's consent is an infringement sanctioned by the courts. The design or model is valid for 15 years with the possibility of renewal in the fifth and tenth years.

### **Marks; collective marks; trade names; acts of unfair competition**

Marks play a major role in the conduct of industrial and commercial activities in terms of both marketing and commercial promotion. A mark is registered if it is distinctive, while not being confusing, misleading, deceptive or descriptive. The right to use the mark is acquired at the time of registration. The registration application indicates the products on which the mark will be used.

The examination of applications begins with the allocation of a filing date. Contrary to patents, utility models and industrial designs, a formal and substance examination is conducted. Where the mark meets all the substantive requirements for registration purposes, publication follows so as to allow any interested person to oppose the registration of the mark. In case of opposition, the decision to register the mark or reject the application is taken after the case is examined as to substance and the parties concerned have been interviewed.

The registration of a mark grants the owner the exclusive right of use. Any unauthorised use is an infringement sanctioned by the courts. The registration of a mark is of indefinite duration, provided that a renewal fee is paid after each ten-year period.

### **Protection of geographical indications**

The protection of geographical indications plays a very important role in commercial relations at both the national and international levels. Their unlawful use can mislead consumers.

Geographical indications apply to certain specific products such as sugar, fruit, wine, tea, coffee and textile products. They may contribute to the reputation of a product, serve as a basis for consumers' marked preference and may considerably enhance the export boom.

A geographical indication is protected if a quality, reputation or other characteristic of the products can be assigned to this geographical origin. Consequently, only producers carrying out their activity in the indicated geographical region have the right to use the geographical indication for the designated products for commercial purposes. The procedure for examining applications is similar to that for marks (substantive examination).

### **Protection of layout designs (topographies) of integrated circuits**

The protection of the layout designs of integrated circuits is relatively recent in the field of intellectual property. The protection of layout designs is designed to encourage the creation of original products, and to promote technical progress and the electronics industry. The layout design is protected if it is original. The right to protection belongs to the creator. The application, examination and registration procedures are similar to those for patents.

In the same way as for patents, the registration of a layout design grants the owner the exclusive right of use for commercial purposes. Contrary to patents, the so-called practice of "reverse engineering" is permitted. According to this practice, the use of a novel and original layout design, created on the basis of an evaluation and analysis of a protected layout design, does not require the consent of the owner of the protected layout design. The use of a derived or dependent patent, which is not possible without infringing the main patent, requires the authorisation of the owner of the main patent or, where appropriate, the grant of a compulsory license. The system of licenses is similar to that for patents.

### **Miscellaneous and final provisions**

The administration of industrial property is entrusted to the Minister of Trade and Industry. The Minister grants the industrial property titles envisaged by the IP Law. He/she receives the applications and fixes, by decree, the different filing and processing fees and lays down the other procedures containing measures for implementing the Law.

The IP Law establishes the first applicant principle. An application must be filed in one of the three official languages: English, French or Kinyarwanda. In order to simplify the procedures and facilitate communications, any foreign applicant will be represented by an industrial property agent (representative) approved in Rwanda.

Prior to exercising any discretionary power granted to him/her by this Law, concerning, for example, the rejection of an application or the grant of non-voluntary licenses, the Minister will provide a person engaged in proceedings with the opportunity of an interview.

The infringement of an industrial property title (forgery, acts of unfair competition) is sanctioned by the courts. Where the infringement action relates to a patented process used to obtain a product, the procedure provides for the principle of the "reversal of the burden of proof" for any identical product manufactured by a third party. According to this principle, the manufacturer of the identical product will be assumed to be the infringing party until proven otherwise.

With the enforcement of the IP Law, the industrial property titles granted in accordance with the 1963 laws will remain in force during the remaining period, provided that the renewal fees envisaged by the IP Law are paid.

The Law implicitly obliges the owner of an industrial property title to use it for industrial or commercial purposes in a sufficient and rational manner. He has the opportunity to use it himself or to negotiate and grant operating licenses with commercial conditions guaranteeing equitable remuneration. In very specific cases, the IP Law authorises the grant of non-voluntary licenses (compulsory and ex officio licenses).

To maintain his patent or other industrial property title in force, the owner should pay regular renewal fees, otherwise the patent will lapse.

## **10. Impact on business**

The improvement of IP administration and enforcement together with the specific measures laid out in this Policy and Law will be beneficial to business in their promotion of greater science, technology and protection of the output of creative industries.

The extent of the positive impact on businesses will depend on how widespread and effective dissemination strategies for encouraging the use of IP systems become. This will particularly be the case with the promotion of utility models for domestic innovation, as well as improvements in the ability of firms to access international technologies. The combination of these two factors could lead to significant

## **11. Impact on equality, unity and reconciliation**

The majority of firms in Rwanda are micro, small and medium enterprises (MSMEs). These firms provide the bulk of employment as well as economic opportunities and growth. Rwandans employed in these firms will be as well off as the firms in question – the more productive firms become, the higher the wages they will be able to afford. Higher wages in turn can be expected to have a broadly egalitarian impact for Rwandan society.

For this to be the case, the areas of the Policy relating to the wider use of utility models for encoding and encouraging innovation by MSMEs must be implemented efficiently and effectively. With time this use should see the greater productivity improvements that will feed in to the improved conditions for the Rwandan workforce.

## **12. Handling plan (communication plan)**

This IP Policy together with the IP Law should be widely disseminated following the creation of the Rwanda Development and Intellectual Property Forum (RDIPF). The RDIPF will be the first stage in implementing the policy. The next steps developed in the implementation framework in Annex B, will require significant multi-stakeholder collaboration and consultation. They include improving financial and technical support to IP administration (RDB) as well as enforcement (Customs, police, courts), as well as dissemination of an IP culture more broadly to the Rwandan business community. Furthermore, upon joining the Regional and International Organizations / Treaties and Agreements, further stakeholder engagement should be established to widen public knowledge of the improved system that will result.

Dissemination of this policy will therefore take some time and involve a number of institutions. But as stated above, this should start with the creation of the RDIPF and move on from there.

## Annex A: Membership of the Rwanda Development and Intellectual Property Forum

<b>Public Sector (government ministries and agencies, universities and research institutions)</b>
• Office of the President
• Ministry in Charge of Science, Technology, Scientific Research and ICT
• Office of the Prime Minister
• Minister in the Office of the Prime Minister in Charge of Information
• Ministry of Trade and Industry (MINICOM)
• Ministry of Sports and Culture (MINISPOC)
• Ministry of Agriculture and Animal Resources
• Ministry of Finance and Economic Planning (MINICOFIN)
• Ministry of Natural Resources
• Ministry of Education
• Ministry of Health
• Ministry of Justice
• Ministry of Internal Security
• Ministry of Foreign Affairs and Cooperation
• Parliament (Senate)
• Parliament (Chamber of Deputies)
• Supreme Court
• Commercial High Court
• Police
• Rwanda Science and Research Council (RSRC)
• The Centre for Innovation and Technology Transfer (CITT)
• Office Rwandais d'Information (ORINFOR)
• Rwanda Revenue Authority (Customs Department)
• Rwanda Development Board (RDB)
• High Learning Institutions
• Rwanda Agricultural Development Authority (RADA)
• Rwanda Bureau of Standards
• Privatisation Secretariat
• Rwanda Academy of Language and Culture
• Coffee Authority (OCIR-Cafe)
• Provincial Governors
<b>Private sector and non-governmental organisations</b>
• Private Sector Federation
• Accredited University and Private High Learning institutions
• Media houses (TV stations, radio)
• Religious associations
• The Law Society

## Annex B: Implementation framework

Objective	Tasks	Responsibility	Timeline
	Convert the previous Steering Committee on IP to the Rwanda Development and Intellectual Property Forum (RDIPF) and to be co-chaired by MINICOM, MINISPOC and the Rwanda Science and Research Council (RSRC).	MINICOM (lead), RDB, MINISPOC	January 2010
<b>I: Increasing technological literacy and advanced scientific and technological skills</b>	Enhance access to scientific learning and education materials and facilities, including textbooks, scientific journals and databases as well as ICT, such as computer programmes.	RDIPF, RSRC (lead), MINICOM, RDB	2010-2011
	Encourage local publishing in science and technology fields, using copyright where possible.	RDIPF, RSRC (lead), MINICOM, RDB, MINISPOC	2010-2011
	Increase the number of enrolments in science and technology.	RDIPF, RSRC (lead), MINICOM, RDB	2010-2011
	Put in place policy incentives to encourage brain gain.	RDIPF, RSRC, MINICOM (lead), RDB	2010-2011
	Develop programs that can promote innovation and IP culture.	RDIPF, RSRC, MINICOM (lead), RDB, MINISPOC	2010-2011
	Develop programs to promote the uptake of scientific and technological solutions by potential users, such as enterprises, government organisations, research institutions, and society.	RDIPF, RSRC (lead), MINICOM, RDB, MINISPOC	2010-2011
<b>II: Promotion of innovation and creativity including minor and incremental innovations by nationals</b>	Promote IPR registration for minor and incremental innovations through the encouragement of the use of utility models	RDIPF, RSRC, MINICOM, RDB (lead), MINISPOC	July 2010
	Promote IPR registration in the cultural industries particularly through encouraged use of copyright	RDIPF, RSRC, MINICOM, RDB, MINISPOC (lead)	July 2010
<b>III: Increasing access to foreign and local technology by local</b>	Develop the IP Resource and Information centre.	RDIPF, RSRC, MINICOM (lead), RDB, MINISPOC	March 2010

<b>firms and research institutions</b>	Promote the utilisation of the patent information system which will provide access to new technological information and encourage adaptation of foreign technologies to local needs.	RDIPF, RSRC, <b>MINICOM (lead)</b> , RDB, MINISPOC	July 2010
	Develop mechanisms to promote technology transfer from foreign firms and institutions.	RDIPF, <b>RSRC (lead)</b> , MINICOM, RDB, MINISPOC	March 2010
	Put in place mechanisms to promote technology transfer from local research institutions to industry, such as research-industry collaboration.	RDIPF, <b>RSRC (lead)</b> , MINICOM, RDB, MINISPOC	June 2010
	To support transfer of technology, specialists should be retained to scrupulously examine the terms and conditions of licensing agreements to ensure that such licenses do not restrict competition or negatively affect the government's effort to boost technology transfer	RDIPF, RSRC, <b>MINICOM (lead)</b> , RDB, MINISPOC	March 2010
<b>IV: Facilitating access to IP-based essential goods and services especially in the health and food sectors</b>	Join the African Regional Intellectual Property Organisation (ARIPO)	RDIPF, RSRC, <b>MINICOM (lead)</b> , RDB, MINISPOC	February 2010
	Awareness creation among the policy-makers, the consumers and relevant government organs and institutions on exceptions in IP laws and the TRIPS flexibilities.	RDIPF, RSRC, <b>MINICOM (lead)</b> , RDB, MINISPOC	April 2010
	Promote a better understanding of the IP system by the consumers and show advantages of the protection and promotion of national products and services in competition with foreign products and services.	RDIPF, RSRC, <b>MINICOM (lead)</b> , RDB, MINISPOC	June 2010
<b>V: Facilitating investments in innovative and creative activities and profit</b>	Sensitise on the application of copyrights, ensuring wider participation by creative industries	RDIPF, RSRC, MINICOM, RDB, <b>MINISPOC (lead)</b>	June 2010
	Promote the enforcement of IPRs, ensuring fair and equitable remuneration to innovators and actors in the creative industries	RDIPF, RSRC, MINICOM, RDB, <b>MINISPOC (lead)</b>	March 2010
	Establish workable linkages between research and development institutions, universities and the private sector	RDIPF, <b>RSRC (lead)</b> , MINICOM, RDB, MINISPOC	April 2010

	Promote development-focused IP courses at all levels of education	RDIPF, RSRC, MINICOM, <b>MINEDUC (lead)</b> , RDB, MINISPOC	August 2010
<b>VI: Enhance the protection of traditional knowledge and facilitate equitable access to genetic resources and benefit-sharing</b>	Recognise the value of traditional knowledge and responding to the needs of the knowledge holders through law if necessary	RDIPF, RSRC, <b>MINICOM (lead)</b> , RDB, MINISPOC	June 2010
	Promote respect for traditional knowledge and its conservation and preservation including repression of unfair and inequitable uses of the knowledge	RDIPF, RSRC, <b>MINICOM (lead)</b> , RDB, MINISPOC	June 2010
	Promote innovation and creativity and overall community development including facilitating legitimate trade in traditional knowledge-based goods and services	RDIPF, RSRC, <b>MINICOM (lead)</b> , RDB, MINISPOC	June 2010
	Prevent biopiracy – this includes the creation of laws for traditional knowledge and genetic resources	RDIPF, RSRC, <b>MINICOM (lead)</b> , RDB, MINISPOC	June 2010