

WHAT IS DOMESTIC INTELLECTUAL PROPERTY (IP) LAW: AN INTRODUCTION

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This is a gathering of Intellectual Property (IP) Law enthusiasts. In this personal development series, we have taken in stages various areas of concern in understanding the field of intellectual property. At this stage, I want to believe that we already have a grasp of what IP is. Notwithstanding, WIPO defines IP to mean the creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.¹ Thus, IP Law is that area of law that regulates IP.

Introduction to Domestic IP Laws

In understanding what Domestic IP Law means, we have to understand the context in which the word “domestic” is used. The English electronic dictionary defines domestic to mean “of or relating to home” and “internal to a specific country”. Adopting this definition, “domestic” qualifies activities peculiar to a locality which is home to some persons. Thus, an opposite of “domestic” will be “foreign” or “international”.

Therefore, Domestic IP Law will refer to the IP Laws of a region, state, or nation that applies to the people of such region, state, or nation. This is opposed to the International IP Laws. Here when we refer to the Domestic IP Law in this sense, we refer to the Domestic IP Law of States like Nigeria, Ghana, England, South Africa, Britain, USA, Cameroon, to mention but a few. For every State, reference must be made to its specific legislation, although the provisions of the law may be similar. There are, however, subsidiary legislations that may be made in a state to regulate IP practices, this class of legislations shall not be treated in this discourse. For the purpose of this discourse I shall identify the Domestic IP Laws of Nigeria, Cameroon and Ghana and reference shall only be made to legislations. I encourage detailed discussions on them on later sessions.

Domestic IP Law in Ghana

The main intellectual property laws in Ghana include:² the Copyright Act, 2005 (Act 690); the Patents Act, 2003 (Act 657); the Trademarks Act, 2004 (Act 664); Geographical Indications Act, 2003 (Act 659); Layout-Designs

¹ World Intellectual Property Organization, “What is Intellectual Property”
<<https://www.wipo.int/about-ip/en/>> accessed 25 July 2020

² Wikipedia, “Registration of Intellectual Property in Ghana”
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1 | Page](https://en.wikipedia.org/wiki/Registration_of_Intellectual_Property_in_Ghana#:~:text=The%20main%20intellectual%20property%20laws,%2C%202000%20(Act%20589).>”> accessed 25 July 2020</p></div><div data-bbox=)

(Topographies) of Integrated Circuits Act, 2004 (Act 667); the Industrial Designs Act, 2003 (Act 660) and the Protection Against Unfair Competition Act, 2000 (Act 589).

1. The Copyright Act, 2005 regulates copyright and its registration in Ghana. It provides for the works eligible for copyright, the duration of Copyright (which is the lifetime of the author and 70 years after his death), other rights enjoyed by a copyright holder, among others.
2. The Patents Act, 2003 provides for the registration and procedure for the registration of patents. Inventions are protected under this Act.
3. The Trademarks Act, 2004 provides for the protection and registration of trademarks in Ghana.
4. The Industrial Designs Act, 2003 protects the visual design of objects that are not purely utilitarian.³ The Act provides for the procedure for registration, the legal effects of registration and the duration of registration which is 5 years at the first instance subject to renewal for two consecutive times.⁴
5. The Protection Against Unfair Competition Act, 2000 provides protection against unfair competition and related matters. However, unfair competition is incidental to IP but is not an area of IP protection. Interest is taken in respect to this Act as an IP law because its provisions protect interest in IP such as trademark, tradename, industrial designs, geographical indications, among others. By section 7 of the Act,⁵ in addition to the acts and practices referred to in sections 1 to 6, any act or practice during industrial or commercial activities that is contrary to honest practices constitutes an act of unfair competition. The acts referred to in section 1 – 6 includes causing confusion with respect to another's enterprise or its activities⁶; damaging another person's goodwill or reputation⁷; misleading the public⁸; discrediting another person's enterprise or its activities⁹ unfair competition in respect of secret information¹⁰; and unfair competition in respect of national and international obligations¹¹.

³ Ibid.

⁴ Section 10 of the Industrial Designs Act, 2003 (Act 660) of Ghana.

⁵ Protection Against Unfair Competition Act, 2000 (Act 589) of Ghana

⁶ Ibid, Section 1

⁷ Ibid, section 2

⁸ Ibid, section 3

⁹ Ibid, section 4

¹⁰ Ibid, section 5

¹¹ Ibid, section 6

6. Geographical Indications Act, 2003 protects geographical indications and use of Marks in Ghana. According to the Act, "geographical indication" means an indication which identifies a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to its geographical origin.
7. Layout-Designs (Topographies) of Integrated Circuits Act, 2004 basically protects the layout-designs (topographies) of integrated circuits in Ghana. The term of protection for lay-out designs in Ghana is 10 years. According to the Act, "layout-design (topography)" means "the three-dimensional disposition, however expressed, of the elements, at least one which is an active element, and some or all of the interconnections of an integrated circuit or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture;" "integrated circuit" however, means "a product, in its final form or an intermediate form in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material and which is intended to perform an electronic function".¹² Therefore, this Act basically protects the layout-designs in an electronic product.

Domestic IP Law in Nigeria

Nigeria has a developing IP environment. Although there are existing IP Laws that date to the 90s, these laws have not been taken so seriously until in recent times. The consciousness of the people in relation to IP is being awoken and we hope to see better times. Among the extant IP Laws in Nigeria are 3 major legislations which are the Copyright Act, Cap C28 Laws of the Federation of Nigeria (LFN) 2004; the Patents and Designs Act, Cap P2 LFN 2004; and the Trademarks Act, CAP T13 LFN 2004.

1. The Copyright Act provides for the protection of works such as literary works, musical works, artistic works, cinematograph films, sound recordings and broadcasts.
2. The Patents and Designs Act provides for the registration and protection of patents and designs in Nigeria.
3. The Trademarks Act regulates the registration and protection of trademarks in Nigeria. These are marks that differentiates goods or businesses from another.

¹² Section 22 of the Layout-Designs (Topographies) of Integrated Circuits Act, 2004 (Act 667) of Ghana

Domestic IP Law in Cameroon

The law regulating IP practice in Cameroon is the Bangui Accord of 02/03/1977 as amended on 24/02/1999.¹³ The Bangui Accord is a product of an agreement between Cameroon (headquarters), Benin, Burkina Faso, Central African Republic, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea Bissau, Guinea Conakry, Mali, Mauritania, Niger, Senegal, Tchad and Togo to create the African Intellectual Property Organization (AIPO) which is a regional IP system popularly referred to by its French acronym, OAPI. The immediate fallout of this regional approach is that an IP registered in OAPI is covered and protected in all 16 member countries with a total population of more than 100 million.¹⁴

The Bangui Accord regulates the protection of IP rights in patent, utility models, trademarks and service marks, industrial models/designs, trade names, geographical indications and appellations of origin, literary and artistic property, protection against unfair competition, topographies of integrated circuits and protection of plant varieties.¹⁵ It also regulates IP records, changes in the records, searches and renewal of rights.

Therefore, for Cameroon there is no significant difference between her domestic IP Laws with what we refer to as International IP Laws. However, no matter how one may want to construe it, it is submitted that the Bangui Accord is still domestic to Cameroon, although International, since Cameroon has adopted it to apply locally to her.

Conclusion

Domestic IP laws are the IP laws that apply locally to a state. We talked about the various legislative enactments that are in force in Ghana, Nigeria and the Cameroon's IP Law. There might be similarities in these laws, however, the laws of every state must be referred to once an IP protection is sought in that jurisdiction.

Therefore, where a party complies with the provisions of the above listed laws in protection of an IP right in the specific jurisdiction, he can have a right of redress upon breach by a third-party infringer.

¹³ Feh Henry Baaboh, "Intellectual Property Law in Cameroon" <https://www.hg.org/legal-articles/intellectual-property-law-in-cameroon-7160#:~:text=The%20law%20regulating%20intellectual%20property,on%2024%2F02%2F1999.&text=The%20immediate%20fallout%20of%20this,of%20more%20than%20100%20million> accessed 25 July 2020

¹⁴ Ibid.

¹⁵ Ibid.