JUSTIFICATIONS FOR COPYRIGHT AND PATENTS PROTECTION

by

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1. INTRODUCTION

Intellectual Property (IP) Law is concerned with legal rights associated with creative efforts or commercial reputation and goodwill.[1] It governs the acquisition, regulation and enforcement of intellectual properties in any given jurisdiction. According to the Supreme Court of the United Kingdom there is a general consensus as to the core contents of intellectual property but none as to its limits.[2] Generally, the core fields of IP include copyright and related rights, patents, trademarks, industrial design, geographical indications and reaching to plant variations and traditional knowledge.[3] What unites these rights which fall under the rubric 'intellectual property' is that the subject matter of protection is intangible.[4] More specifically, the three central Intellectual Property Rights (IPRs) are Copyright, Patent and Trademarks:[5]

IPRs have been described as negative rights.[6] What this implies is that these rights rather than confer on a right- holder the ability to exploit his IP, deters or retrains others from the use of or exploitation of such IP without license of the right- holder. This is because a right- holder does not require IP protection to personally exploit an intellectual property.

A historical survey of the evolution of intellectual property can be traced as far back as the evolution of our species when for tens of centuries IP existed in a primitive form such as the early man creating impressions on the walls of his caves creating among others; man's first artistic works, tools carved out of stone as a means of survival for

[1] David Bainbridge, *Intellectual Property* (9th Edition Pearson Education Ltd 2012) p 3

[2] *Phillips v News Group Newspapers Ltd* [2012] UKSC 28; [2013] 1 AC 1 [20]

[3] Tanya Aplin and Jennifer Davis, *Intellectual Property Law: Text, Cases and Materials* (3rd Edition Oxford University Press 2017) p 1

[4] The concept of 'intangibility' remains an uncertainty as the definition and scope of intangible subject matter may prove problematic. However, intellectual property rights unlike tangible or real properties are incorporeal.

[5] William Cornish, David Llewelyn and Tanya Aplin, *Intellectual Property: Patents, Copyright, Trademarks and Allied Rights* (8th Edition Sweet and Maxwell 2013) p 7

[6] Ibid 6

hunting or harvesting of crops which marked man's first inventions (patent).[7] The early man was also said to have drawn pictures depicting his struggles particularly in relation to his hunting expeditions.[8] These when interpreted told the stories of a caveman which is presently referred to as 'authorship' in copyright. Furthermore, man has been known to associate products or services to a given origin through the use of marks in a given market by thumbprints or other primitive symbols on herds of cattle, leather, books, swords, pottery and so on.[9] This is the underlying nature of trademarks which has ostensibly evolved over the years beyond mere association of goods and services.

The various fields of IP have massively developed or expanded and have attracted global attention. The development of commercial aspects of intellectual properties and consequent high rate of infringement led to the clamour for protection and recognition of intellectual creations as property rights. There are numerous theories justifying the protection of IPR and monopoly attached thereto. Consequently, some of these schools of thought have been largely criticised as the protection afforded to IPRs arguably stifle the growth of prevalent national and international trade relations by granting monopolies to right- holders. The various theories justifying the existence of IPRs such as copyright and patents and their inherent nature as rights are herein canvassed.

I. **NATURE OF COPYRIGHT**

The history of copyright is very complex. Depending on one's interest, it is possible to highlight various theories.[10] Although works of copyright were in existence and can be traced back to the history of man, copyright law did not take on its modern meaning as a discrete area of law until the mid- nineteenth century.[11] Copyright as a property right is regulated by national laws such as Copyright, Designs and Patents Act (CDPA) 1988 and Copyright Act, CAP 28 Laws of the Federation of Nigeria 2004 in the United Kingdom and Nigeria respectively.

[7] Amir Khoury, Intellectual Property and You [2010] Washington, U.S Patent and Trademark Office 27 <https://heinonline.org/HOL/P?h=hein.intprop/ipyou0001&i=43> accessed 8 January 2020
[8] Ibid
[9] Ibid
[10] Lionel Bentley, Brad Sherman, Dev Gangjee and Phillip Johnson, *Intellectual Property Law* (5th Edition Oxford University Press 2018) p 37
[11] Brad Sherman, Remembering and Forgetting: The Birth of Modern Copyright Law (1995) 10 IPJ 1

Copyright unlike other fields of intellectual property law requires fewer formalities as a work need not be registered by a creator to enjoy copyright benefits.[12] The essential requirement is that a work is original, in that it constitutes an independent creation of the author which presupposes the existence of labour and skill.[13] The principle of 'originality' in copyright is developed by judge made law upon consideration of the peculiarities of each case presented before the courts.[14] Copyright is interested in the expression of ideas and not the underlying ideas in themselves.[15]

The subject matter of copyright is regulated by national and international laws and include literary, artistic, dramatic and musical works and by extension, performing rights, choreographic works, broadcasting and recording. These are cumulatively known as author and neighbouring rights respectively. An important feature of copyright protection is the need for 'fixation' which stems from the need for an 'expression' of an idea.[16] This simply requires the expression of a work in a tangible or permanent form. Copyright confers two types of rights; economic and moral rights which are enjoyed for a limited period of time, usually the life time of the author and 70 years after.[17]

II. **NATURE OF PATENTS**

According to the World Intellectual Property Organisation, a patent is the grant of exclusive rights over an invention; a product or a process that provides, in general, a new way of doing something or offers a new technical solution to a problem and is often referred to as a monopoly right.[18] Patent protection requires full disclosure of the invention lodged with the appropriate authority in exchange for the grant of exclusive right to commercial exploitation of the invention for a limited period of time. Like copyright, the patents system of every country is governed by national and international and/or regional treaties and conventions on patents. In the United Kingdom, the patent system is regulated by the Patents Act 1977[19] *in pari materia* with relevant provisions contained in the CDPA 1988. The Nigerian Patents framework is regulated by the Patents

[12] Article 5(2) Berne Convention for the Protection of Literary and Artistic Works 1886
[13] Paul Torremans (n 12) 175
[14] Case C-5/08 *Infopaq International A/S v Danske Dagblades Forening* [2009] ECDR 16
[15] *Designers Guild v Russell Williams Textiles Ltd* [2000] 1 WLR 2416; *Kleeneze Ltd v DRG (UK) Ltd* [1984] FSR 399
[16] Paul Torremans (n 12) 176
[17] Section 12, Copyright, Designs and Patents Act 1988
[18] World Intellectual Property Organisation, <https://wipo.int/patents/en> accessed 9January 2020
[19] As amended by the Patents Act 2004 (by the Regulatory Reform (Patents) Order 2004 (SI 2004/2357)

and Designs Act, CAP P2 Laws of the Federation of Nigeria 2004. Some of the prominent regulations and international patent treaties are:

- European Patent Convention (EPC) 1973;
- Patent Co-operation Treaty (PCT) 1970;
- Patent Law Treaty 2000;
- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) 1994;[20] and
- Convention on Biological Diversity (CBD) 1992[21]

The conditions for patentability are stipulated under national laws. However, the following constitute generally accepted criteria for patentability of an invention as:[22]

a) It must be new;[23]
b) It must involve an inventive step and
c) It must be capable of industrial application;

For an invention to qualify as novel, it must not constitute 'state of the art' which comprises all matter (product, process or any information relating to either) which has been made available to the public, before the priority date[24] of the invention.[25]

2. JUSTIFICATION FOR THE EXISTENCE OF INTELLECTUAL PROPERTY RIGHTS SUCH AS COPYRIGHT AND PATENT

Following the expansion of intellectual property rights, the nature of intellectual property rights protection and its propensity to result in a monopoly, various justifications for the protection of these rights have been propounded. Certainly, not one justification is

[20] TRIPS forms part of the agreements establishing the World Trade Organisation (WTO) and bind all WTO member states including the UK and EC who have been members since 1st January 1995. It sets out minimum standards with respect to substantive patent law- Article 27- 34; Tanya Aplin and Jennifer Davis, *Intellectual Property Law: Text, Cases and Materials* (2nd Edition Oxford University Press 2017) p 550

[21] CBD was signed at Rio de Janeiro on 5 June 1992. Pursuant to Article 1, its aim is the conservation of biological diversity, sustainable use of its components and the fair and equitable sharing of benefits arising out of the utilization of generic resources. By Article 16(1) contracting parties undertake to provide and/or facilitate access for and transfer to other contracting parties of technologies, including biotechnology, that are relevant to the conversation and sustainable use of biological diversity.

[22] *Biogen Inc v Medeva Plc* [1997] RPC 1; *Windsurfing International Inc v Tabur Marine (Great Britain) Ltd* [1985] RPC 59 at 73-74

[23] *Kirin- Amgen Inc v Transkaryotic Therapies Inc* [2005] 1 All ER 667 at 98

[24] This determines the cut-off for determining what is included in the 'state of the art' and refers to the date on which an application is filed; see Section 5 Patent Act 1977.

[25] Jennifer Davis, *Intellectual Property Law* (4th Edition Oxford University Press 2012) p 289

encompassing on all rights and without limitations and/or criticism. Justification must be found, however, for a state to lend its aid to intellectual property right holders.[26]
There exists plethora of hypothesis or theories underlying the existence, rationale and utility of intellectual property rights. For our purposes, these are broadly described and classified thus:

- Prevention of deceitful and fraudulent practices;
- Moral/ Natural right theory;
- Incentive/ Reward theory; and
- Human Rights

a. Prevention of deceitful/ fraudulent practices and unjust enrichment

This theory of justification is user-centered with focus on harm, misrepresentation and unjust enrichment. This justification is by extension interested in the effect of non-protection of intellectual properties on the members of a society. It is a simple justification frequently invoked for appealing to common sense because the act of 'reaping without sowing' is generally frowned upon.[27] Intellectual properties require the investment and application of intellectual prowess in the attainment of consequent result. In the absence of intellectual property protection, the personal and material application of the creative few in a society will only result in lack of creativity and redundancy in a society. New inventions and/or creations may be utilised without care or fear of quality and origin. Misrepresentation, piracy and counterfeiting will be the order of the day. In effect, a system where unauthorised users of an invention receive the benefit(s) which otherwise should accrue to an inventor is created. Lack of protection, indiscriminate utilisation and manufacture of new creations are some potential harm(s) on users caused by substandard reproduction of these inventions.[28] This results in lack of creativity at large. To prevent envisaged harmful effects of non-protection, positive rights must be created by the government to protect intellectual properties.
According to Spence, this theory is more problematic because the principle against reaping without sowing is not absolute since subsequent creators only imitate, adapt and

[26] Michael Spence, *Intellectual Property* (Oxford University Press 2007) p 45
[27] Ibid (n 3)
[28] A succinct example is the effect of substandard pharmaceutical inventions in the absence of pharmaceutical patents.

expand on existing works.[29] Spence further states that this principle turns out to be one which can apply only once it has been determined on other grounds that a creator ought to be able to exclude others from the use of the work and adds nothing to the substantive justifications of intellectual property protection.[30] This theory although intrusively appealing, is not entirely persuasive as it does not clearly stipulate when enrichment at another's expense is unjust but relies on *labour principle* of natural rights for a stronger claim.[31]

b. Moral/ Natural right theory

According to this school of thought, the existence of intellectual property is hinged on the proposition that a creator ought to own that which is a creation of the creator's mental power. This theory, also referred to as deontological theory, is said to accord with the view of renowned philosophers on property rights such as John Locke's labour theory.[32] Locke introduces the idea of work or labour and entitlement thus:

> "Though the earth, and all inferior creatures be common to all men, yet every man has a property in his own person. This nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with it and joined to it something that is his own, and thereby makes it his property…"[33]

The first justificatory strand reflected in the moral/ natural rights theory is that all resources given by God to the exclusion of one's own body are part of the 'commons' which God has endowed every individual with the ability and right to use. Where, then, one has worked on such resources mixed with labour, such property forms part of that person's personal or private property.[34] Applying Locke's theory to intellectual property,

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[29] Micheal Spence, 'Justifying Copyright' in Daniel McClean and Karsten Schubert, *Dear Images: Art, Copyright and Culture* (Manchester Ridinghouse 2002) p 389-403 at 395-6

[30] Ibid

[31] Tanya Aplin (n 3) 4.

[32] Justin Hughes, The Philosophy of Intellectual Property, (1988) 77 Geo L J 287; Helen Norman, *Intellectual Property Law* (2nd Edition Oxford University Press 2014) p 89

[33] John Locke, *Two Treatises of Government, Second Treatise* (3rd Edition Cambridge University Press 1988) p 287-288

[34] Graham Dutfield and Uma Suthersanen, *Global Intellectual Property Law* (Edward Elgar Publishing Limited 2008) p 54

it can be said that every person has property right to their intellectual labour.[35] Lawrence Becker suggests that various social norms may generate a need in the creator for identification with and ownership of an intellectual property such as the need for control over use because of investment (material and personal) made in the course of production or the need to secure autonomy.[36]

It generally appears unjust and against natural law to deprive a creator or an inventor of the privileges which will otherwise accrue to a creation of mental application. It is for this reason that intellectual properties must be protected by the state through enactment of laws to regulate the exercise and protection of intellectual property rights. The moral/ natural rights justification is predominantly adopted for copyright and patents protection. Other lines of argument closely associated with the natural rights theory are the desert argument,[37] personal autonomy[38] and personhood.[39]

This theory has been criticised for applying Locke's theory of property to intangible property as it is not clear that the total value of an intellectual creation is entirely attributable to the 'labour' of an individual, an imprecise tool for designating the boundaries of intangible objects.[40] According to Hettinger, a right- holder may be rewarded by gratitude, awards and public financial support as opposed to exclusive rights of ownership over such intangible properties.[41] The concept of moral/ natural rights is burdened with uncertainties as to application or scope.

[35] Tanya Aplin (n 3) 6

[36] Lawrence Becker, Deserving to Own Intellectual Property (1993) 68 Chicago-Kent L Rev 628, also available at<https://pdfs.semanticscholar.org/c2dc/a6a2b40f3e18891707af3b0541f6fbf5711b.pdf> accessed 6 January 2020

[37] A claim that the creator of a work *deserves* control over its use; Lawrence Becker, 'Deserving to Own Intellectual Property' (1993) 68 Chicago-Kent L Rev 628

[38] The value of personal autonomy must involve recognising the right of control over things of close association such are intangible properties; Tanya Aplin and Jennifer Davis, *Intellectual Property Law: Tests, Cases and Materials* (3rd Edition Oxford University Press 2017) p 63

[39] This posits that the act of creation entails the choice of expression, anembodiment of the creator's personality. Control over the creation becomes necessary to secure the creator's personality; Margaret Jane Radin, 'Property and Personhood' (1982) 34 Stan L Rev 957; Justin Hughes, 'The Philosophy of Intellectual Property' (1988-9) 77 Geo L J 287 at 330

[40] Ibid (n 38)

[41] Edwin Hettinger, Justifying Intellectual Property (1989) 18 Philosophy & Public Affairs 31; also available at http://hettingern.people.cofc.edu/Hettinger%20-%20Justifying%20Intellectual%20Property.pdf accessed 6.1.2020

c. Incentive/ Reward theory

One of the traditional theories for the justification of intellectual property protection especially in relation to copyright and patents is the incentive/ reward theory. This theory is described as a utilitarian view supported by Jeremy Bentham's theory of utilitarianism which argues that laws are socially justified if they bring the greatest happiness, or benefit, to the greatest number of people.[42] Another theory closely associated but utterly misconceived is the *contract/ consideration* theory.[43]

This is an economic approach to the need for protection of intellectual properties. This theory posits that the exclusive right to utilise intangible property is required to stimulate intellectual creativity. There exists an understanding that the creation or invention of intangible properties result from the personal application and investment (fiscal or otherwise) of the creator. As a result, investment should be stimulated by the presence and enforcement of positive laws that provide a framework ensuring that the publication of new works, research and development, manufacture and marketing of new products may yield a return on that investment.[44] It is logical that an inventor requires utmost maximisation of profit accruing to an investment in property; tangible or intangible. The idea of incentivising a creator to further apply mental ability into creation is not only beneficial to the creator but to the economy at large. There are numerous benefits of intellectual properties to an economy; economic growth, technology advancement in areas such as telecommunications and transportation, increased prosperity and employment, improvements in healthcare by the introduction of patents to pharmaceuticals and so on.[45] This theory found favour in the United States and is duly established by Article 1, s. 8 of the United States Copyright and Patents clause of the US constitution 1789 (as amended) which states thus:

> "… to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries".

[42] Tanya Aplin (n 3) 13.

[43] Contract/ consideration theory suggests a contract between the state and an inventor/ creator for the transfer of invention to the state in exchange for IP protection for a given period. The consideration theory was canvassed by Jacob J in *Phillips Electronics NV v Remington Consumer Products Ltd* [1998] RPC 283

[44] David Bainbridge, *Intellectual Property* (10th Edition Pearson Education Limited 2019) p 21

[45] Ibid

Similarly, the 2001 European Commission (EC) directive on copyright is justified based on stimulation of creative content.[46] This is based on the understanding that if the government fails to encourage creativity through its intellectual property laws, no one would engage in original creations. The grant of intellectual property rights such as the monopoly by patents for a limited period is a means to an end- economic progress.[47]

This theory of justification has been criticised as having its motivation as the community benefit rather than appreciation for the inventor. This is evident in the grant of a patent only to the 'first to file' to the exclusion of all other inventors such as the first to invent and independent inventors.[48] Professor Michael Pendleton shares the opinion that existing IP rights such as patent amount to unjustifiable monopolies which can be avoided through the adoption of an all embracing law of valuable commercial information as a means of incentivizing inventors, replacing specific rights with wide and subjective economic discretion.[49] It is argued that the foundational belief of this theory is superfluous as IP rights guarantee protection for inventors but not motivation as innovation is stimulated by various independent factors such as interest.[50] This argument stems from an understanding that motivation is more internal than external. In the absence of exclusive rights to an intellectual creation, there remains the presence of an inherent motivation by which an inventor creates. Furthermore, contrary to that which the incentive/ reward theory suggests, extrinsic rewards stifle creativity. With regard to the transfer of knowledge and open source technology in a society, Ghosh argues that even where positive rights encourage creation, there remains the question of whether strong rights promote the distribution and consumption of the fruits of intellectual property as to achieve 'greater good'.[51]

[46] Recital 2, EC Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001; based on Articles 47(2), 55 and 95 of the Treaty establishing the European Union.

[47] *Chiron Corporation v Organon Teknika Ltd* (No 10) [1995] FSR 335 at 332

[48] Catherine Colston and Kristy Middleton, *Modern Intellectual Property Law* (2nd Edition Cavendish Publishing Limited 2006) p 43

[49] Michael Pendleton, Intellectual Property, Information Based Society and a New International Economic Order- the Policy Options [1985] EIPR 31

[50] Colston (n 51) 45; Eric Johnson, 'Intellectual Property and the Incentive Fallacy' (2012) 39 Fla St U L Rev 623

[51] Shubha Ghosh, 'The Intellectual Property Incentive: Not So Natural as to Warrant Strong Exclusivity' (2006) 3 SCRIPTed 96

d. Human rights

Unlike other theories, the link between intellectual properties and human rights is a fairly recent development.[52] This argument posits that intellectual properties ought to be considered 'property rights' entitling right- holders to protection. It goes beyond the consideration of intellectual property to the right of a person to own and dispose of personal property in such a manner as considered necessary. This theory draws its strength from international conventions such as the Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and certain Regional legislations such as the Charter of Fundamental Rights of the EU 2000/C 364/01 and European Convention on Human Rights 1950. The relevant provisions of these legislations are reproduced hereunder.

Articles 17 and 27 of UDHR state thus:

> **Article 17:**
>
> (1) Everyone *shall have the right to own property* alone as well as in association with others. (Emphasis added)
>
> (2) No one shall be arbitrarily deprived of his property.
>
> **Article 27:**
>
> (1) Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
>
> (2) Everyone has the *right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.* (Emphasis mine)

The UDHR remains a landmark agreement in the history of human rights protection, a reason it is reckoned on in the human rights implication of the protection of intellectual properties. Article 27(2) in clear terms provides for what is regarded as the economic and moral rights of an author. This implies that intellectual properties should be accorded the recognition and protection of human right and non-protection should be construed as a breach of right to property. To further illustrate this point, Article 15 of ICESCR provides:

[52] Tanya Aplin (n 3) 9

> "Everyone has the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic protection of which he is the author".

By the preamble of the UDHR, all member states are obliged to adapt and/or replicate these provisions on human rights protection in their national laws. This suggests that creators and inventors, in the absence of stipulated IP laws, may validly protect and claim against an infringer.

In the European Union, Article 1, Protocol 1 ECHR and Article 17(1) and (2) of the Charter of Fundamental Rights of the EU both recognise that intellectual property falls within the scope of the 'right to own, use, dispose of and bequeath one's lawfully acquired possessions.[53]

Like other theories, the argument to treat intellectual property as human right has been criticised on various grounds. According to Peter Yu[54], the inclusion in the human rights debate of a relatively trivial item like intellectual property protection would undermine the claim that human rights are of fundamental importance to humanity. Other writers such as Ostergard, opine that the United Nations Declaration is flawed as intellectual properties are not all significant in the physical well-being of a person and as such, issues relating to physical well-being must take priority over guarantee of IP as a universal human right.[55] Furthermore, the declaration of IP as human right is more problematic as IP protection raises barriers to commodity access beneficial to physical well-being and national development.[56]
Irrespective of these criticisms, the Court of Justice of the European Union (CJEU) has been seen to invoke this theory in aid of intellectual property protection.[57]

[53] Tanya Aplin and Jennifer Davis, *Intellectual Property Law: Tests, Cases and Materials* (3rd Edition Oxford University Press 2017) p 9
[54]Peter Yu, 'Ten common questions about intellectual property and human rights' (2006) 23 Ga St U L Rev 713
[55] Robert Ostergard, 'Intellectual Property: A Universal Human Right' (1999) 21 Hum Rts Q 175
[56]Ibid 176
[57] C- 277/10 *Martin Luksan v Petrus Van der Let Case* [2013] ECDR 5

3 CONCLUSION/ RECOMMENDATION

Although not one theory of justification for the protection of intellectual property rights is all- encompassing, the plethora of texts on the justification of intellectual property protection, to a large extent evidences the necessity of the subject matter. The importance of protection afforded to intellectual properties cannot be over-emphasized. The criticisms of most theories adopt a technical approach in analyzing a prevalent loophole of a theory. Intellectual Properties are an undeniable practical constituent of every society.

This writer agrees with the utilitarian justification to the extent that it amounts to *quid pro quo* for parties; a right- holder, a user and the government. It is a lesser evil for the government to grant positive rights to creators and inventors at little or no cost than to actively reward every inventor for a valuable invention. The determination of that which is 'valuable' becomes subjective; a situation of uncertainty. Safe to say that a positive law approach protects members of the public from fraudulent misrepresentation such as wrongful attribution of authorship of a work or harmful reproduction of substandard medicines and medical equipment(s).

In response to the Pendleton critique and in concurrence with Professor Cornish[58] taking a competition dimension, enacting loose-end laws as opposed to the grant of specific rights may become a weapon by which first entrants into a successful market can engage in legislative bullying of competitors seeking to enter the market. This is because for the right-holder there are endless possibilities to that which can be claimed. Furthermore, reacting to 'inherent motivation' critique over reward, it is submitted that although absence of economic rights may not exterminate the presence of internal or inherent motivation, the effect of material gains over creativity cannot be ignored. Intellectual properties are no doubt creations of the mind, largely fuelled by interest and passion. However, in the absence of fiscal gains or returns, necessary materials through which research is conducted may be unavailable, thereby hampering the level of creativity attainable. An inventor is also motivated to work hard to earn a living off that which he creates. Taking away exclusive rights to utilise and control intellectual creation falls nothing short of slavery and/or theft by a government over its subjects.

[58] William Cornish, 'Genevan Bootstraps' [1997] EIPR 336

A consideration of the protection of intellectual property as universal human right begs the question- *is intellectual property a property right properly so-called?* It is my submission that intellectual properties are distinct from real properties as they are intangible. The intangible nature of IP, given the rapid advancement of technology and use of the internet endangers IP by encouraging indiscriminate copying, abuse and infringements. It is for this reason that great attention has been sought and attracted in respect of intellectual property protection by academics and IP officials.

Finally, the various projections of justification theories of intellectual property protection and resulting critiques have not amounted to the rejection of IP protection. As established, the various fields of intellectual property protection have expanded in scope, application and protection over the years. This may be consequent upon the immeasurable benefits of the presence of intellectual properties adequately protected by positive laws; national and international. Effective registration and protection measures have been adopted such as the international trademarks[59] and patents systems[60] administered by the World Intellectual Property Organisation (WIPO) to enhance intellectual property protection over a wider range of countries. While the efforts of international organisations such as WIPO is commended, mechanisms for proper education and enlightenment of the benefits of IP protection especially in developing and under-developed countries through the incorporation of intellectual property law in university curriculum, seminars and webinars is highly recommended.

For more information

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[59] Instituted by the Madrid Agreement 1891 for an International Trademark System (registration and management) and provides trademark protection over 122 countries through filing a single application in a member state; more information at WIPO website <https://www.wipo.int/madrid/en/> accessed 11 January 2020

[60] Introduced by the Patent Co-operation Treaty 1970; more information available at the WIPO website <https://www.wipo.int/pct/en/> accessed 11 January 2020

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