



# Safeguarding Creativity: The Impact of Intellectual Property Protection in the Creative Industry

**By Madeleine Omungalah** – Legal Assistant



(+254) 711 336 187



[m.omungalah@gmail.com](mailto:m.omungalah@gmail.com)

# Summary

- The creative industry thrives on **innovation**, **originality**, and the **expression** of artistic works.
- **IP protection** encourages ongoing advancements, by providing legal **safeguards** for the commercial value of the intellectual property.



# Presentation Outline

- Introduction
- IP Assets
- Benefits of IP protection
- Challenges & Shortcomings
- Recommendations
- Conclusion

But first... a short story

The age-old lesson:  
**kuheshimu mali ya serikali**

*The 'property' tag demands respect*

# INTRODUCTION

- **IP:** property that results from the creations of the mind (fruits of mental labour)
- **IP protection:** the rules for securing and enforcing legal rights to these intangible creations, inventions, designs, and artistic works
- Intellectual property is recognized as a **fundamental human right** under the Kenyan Constitution and the Universal Declaration on Human Rights (Art 27.2)

# INTRODUCTION

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- *Art, music, film, literature, design, and technology, etc,* thrive on the **ingenuity and imagination** of creators
- Earnings heavily pegged on the **exclusivity** of distribution and resell of the creations
- Creativity and innovation thrives when creators can invest their resources knowing creations are **legally protected**

# IP ASSETS

- any intellectual property right in intangible assets
- IP assets should be **registered** to ensure that their use is protected and exclusivity is granted to the creators/Inventors.
- Hold some commercial **value** for a business or person
- Are **intangible**: e.g. technical know-how

# IP ASSETS

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Types of IP Assets:

- **Copyright:** original works of authorship
- **Trademarks:** elements of a business that distinguish its goods or services
- **Patents:** innovations and advancements within the creative industry
- **Industrial Designs:** patterns for a product of industry or handicraft
- **Geographical Indications:** reputation attached to certain origin



# Copyright

- To original works of **authorship**
- 50 year period after publishing or after author's death
- Confer both exclusive/economic and moral rights
- Moral rights are inalienable
- Doctrine of fair dealing: S 26 CA
- **ENFORCEMENT:** *Sautisol vs Azimio; Nonini vs Brian Mutinda & synix entertainment; Nitakufinya meme*

# Trademarks

- Elements of a business that distinguish its goods or services
- Logos, Product names, Words, Symbols, brand sounds...
- Protection may be obtained through use or registration for a period of 10 years from the date of registration
- Registrability criteria (S 12 TA)
- Term of protection for trademarks is not limited; can be renewed indefinitely

# Patents

- Protect technological innovations and advancements within the creative industry
- Grants exclusive rights over inventions over a period of time to encourage investments in research and development
- S 22 IPA 2001 - Must be new, include an inventive step and be industrially applicable

# Industrial Designs

- A composition or form that gives a special appearance to a product of industry or handicraft a
- Should be able to serve as a pattern for a product of industry or handicraft
- Safeguards the visual aspects of products, preserving the unique aesthetics and functional features that make them distinct.

# Geographical Indications

- Identifies a product that originates from a specific geographical area and that has a reputation attached to this origin
- Geographical Indications enable consumers to trust and distinguish quality products
- E.g.: *Champagne* associated to the *Champagne* region in France

# BENEFITS OF IP PROTECTION IN THE CREATIVE INDUSTRY

- Economic diversification, economic growth and innovation
- Monetization opportunities
- Ownership and exclusivity of rights after registration
- Stimulating innovation
- Fostering economic growth and job creation
- Preservation of cultural heritage
- Collaboration and licensing agreements

## CHALLENGES & SHORTCOMINGS

- Piracy - The unauthorized use and distribution of copyrighted content
- Lack of efficient royalty collection mechanisms
- Lack of sufficiently strong legal and administrative mechanisms for enforcement
- The advent of digital technologies has presented a big challenge on how to apply the IP system to the digital platforms and sharing sites.

# RECOMMENDATIONS

- Staying informed and updated on technology implications on IP
- Advocacy for registration of IP assets
- Implementing safeguards internally
- Monitoring infringement and prompt enforcing of IP rights
- Stakeholders education



# RECOMMENDATIONS

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- Leveraging technology to enhance IP protection and cybersecurity measures to protect IP
- Involving policy makers in IP protection and instituting comprehensive laws, enforcement and international cooperation
- Fostering a culture of respect and ethical practices
- Educating the public about the value of creativity and the impact of IP infringement on creators and industry

## CONCLUSION

Intellectual Property (IP) protection is a fundamental pillar of the modern creative industry; safeguarding original works, inventions, and brands, while also incentivizing further innovation and economic growth.

With the recognition that IP protection extends beyond mere legal rights, and that its benefits are far-reaching, we should institutionalize education, awareness, and robust enforcement mechanisms that are crucial in combating threats to these properties


## CONCLUSION

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Through continued support for strong IP frameworks, we can build a sustainable and thriving creative industry that drives economic growth, fosters cultural diversity, and enriches society as a whole.

Thank you

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