

IMARA ROUND TABLE

THEME: INTELLECTUAL PROPERTY AND ENTERTAINMENT LAW

MONDAY 29TH APRIL 2019

Background

The creative sector has the potential to make strong contributions to the country's economy. However there is need to create a conducive environment for this to happen. One of the areas that has been identified as key for creative sector development is Intellectual Property. The Round Table was convened to discuss Intellectual Property and Entertainment Law. The forum drew participation of legal experts working in the area of Intellectual Property, Office of the Deputy President, Government agencies Kenya Intellectual Property Institute, Kenya Conservatoire of Music, and Kenya Copyright Board.

Questions Discussed included:-

How can the challenges facing the creative sector be resolved? Which government agencies are best placed to address them?

Which knowledge gaps exist in the creative sector and who can fill them? Do the creatives know where to get an IP lawyer?

Can the government use the existing legal instruments to protect the sector from monopolies?

Which policy and legislative gaps exists and what can we do about them?

Participants identified some of the challenges faced by the Creative Industry as:-

Creatives losing rights to their creative works: Piracy and other forms of IP violations were identified as major challenges. This can be minimized if KECOBO is better resourced and if creatives understand the need for creatives to seek advice from lawyers who know intellectual property legislation as creatives engage with clients.

Establishing and protecting individual and institutional creative works: Government agencies proactively building mechanisms to protect players in the creative sector (visual artists, musicians, film makers, fashion designers and others). KIPi and KECOBO can do more to increase awareness on what is protectable and how it can be protected. Contract templates that can be shared with the creative sector would be beneficial.

Insufficient government support due to knowledge gaps in Ministries, Departments and Agencies: A number of Ministries, Departments and Agencies appear not to fully understand intellectual property rights and therefore not able to effectively support the development and protection of copyright and other rights. There is a knowledge gap both on the part of both the creatives and the judiciary. Therefore cases related to intellectual property do not always get satisfactory rulings on the part of the creative. There is need to work with the Judicial Training Institute (JTI) to explore how IPR can be incorporated in the training of Magistrates and Judges. Some advocacy work is needed in this regard.

Insufficient Financial Resources for Legal Action: Legal proceedings take long and require financial resources which many creatives do not have. Also there are times when the entity they are seeking redress from is a large corporate that has vast resources. A Creatives IP Litigation Fund could support the sector.

Capacity to benefit financially from intellectual property: Most capacity building forums on Intellectual Property have targeted creative in Nairobi. There have been a few in the regions but there is need for a comprehensive training in intellectual property at the county level. KECOBO, unfortunately, has limited resources.

The following were discussed as possible solutions:-

1. Creatives should engage legal advisers as they consider and enter into pitching meetings, negotiations and/or contracts with clients. A database of Intellectual Property Agents whom the creatives may consider working with is available on the KIPi website (http://www.kipi.go.ke/images/docs/journals/patent_agents_admitted_to_practice_before_kipi_01_04_2014.pdf)
2. KIPi has also signed Memorandum of Understanding (MoU) to provide technical expertise on Intellectual Property to the Jua Kali industry.
3. The Kenya Copyright Board has lawyers who can advise creatives but the Board may not be in a position to monitor every creative contract and the deals the industry is undertaking especially because of the competitive nature of the industry. A creative would have to visit the Board for assistance.
4. Development and implementation of a training program on intellectual property that starts as early as primary school and whose content is customized for users' needs. For example the IP Panorama content developed by World Intellectual Property Organization. These training programs should proactively target customers for example medium and micro enterprise organizations across the country to teach about Intellectual Property. The trainings may need to be tailor made for specific sectors.
5. The National Music Bill seeks to address the business side of the music sub sector; it addresses fairness, licensing, financing of the sector, capacity building and establishment of a music board to promote development of the sector.
6. Creatives are now recognized through the I-tax system, where the Kenya Revenue Authority asks tax payers to indicate which sector they are working in. This is useful in the collection of data on the creative sector.

WAY FORWARD

Fast track the National Intellectual Property Policy currently being handled by the Ministry of Industrialization and Trade. KIPi chairs the Committee reviewing the policy and will engage the Creative Economy Working Group in due course.

The Draft Music Bill is on course and will be availed to participants for their input and feedback.

Track local content broadcasting: The Communications Authority can avail information on trends in local content broadcasting. The government has a responsibility to provide opportunities for the creative industries to grow, our leadership practice should work towards increasing self-respect and reducing

culture of self-hate. This can be done through promotion of and increased support for local content. Government agencies concerned need to advocate strongly and implement policy for enforcing of policy to reduce foreign content. The more local content aired the more the quality will improve.

Funding KECOBO: Stakeholders in the creative sector to increase advocacy for more funding for KECOBO and fast tracking of appointment of board to enable authorization of KECOBO work.