



**PATENTS AND COMPANIES
REGISTRATION AGENCY**

**INTELLECTUAL PROPERTY
KNOWLEDGE BASE PAMPHLET**

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1 Introduction

1.1 What is Intellectual Property (IP)?

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. IP is protected in law by, for example, patents, copyright and trademarks or Industrial Designs which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP legal system aims to foster an environment in which creativity and innovation can flourish.

1.2 What are intellectual property rights?

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

Intellectual property rights are usually divided into two main branches:

Copyright and rights related to copyright: - The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright for the entire duration of the life of the author plus 50 years after the death.

A closely associated field is called “Related rights” or rights related to copyright which covers the rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organizations.

Industrial property:- Industrial property covers distinctive signs used in commerce (i.e., trademarks) to distinguish the goods or services of one undertaking from those of other undertakings) and geographical indications (which identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin). The protection of such distinctive signs aims to stimulate and ensure fair competition and to protect consumers, by enabling them to make informed choices between various goods and services.

Other types of industrial property are protected primarily to stimulate innovation, design and the creation of technology. In this category fall inventions (protected by patents), industrial designs and trade secrets. There is currently no legal framework for the protection of trade secrets in Zambia.

1.3 Types of IPRs:

- a) Patents.
- b) Trademarks.
- c) Geographical Indications.
- d) Copyrights and related rights.

- e) Industrial Designs.
- f) Layout Design for Integrated Circuits.
- g) Protection of New Plant Variety.

Apart from New Plant Varieties which are protected through a registration system administered by the [Seed Control and Certification Institute \(SCCI\)](#) all other types of Intellectual Property Rights are administered by PACRA through [five legislations](#).

2 Patents

A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. It provides protection for the invention to the owner of the patent.

In order to be patentable, an application for the patent of an invention must show that it is within the types that could be protectable by a patent (*see Section 16 of Patents Act*) and should be:

- (i) New or novel;
- (ii) it must involve an inventive step (Non-obvious)
- (iii) Useful, that is capable of industrial application.

The protection is granted for a period of 20 years. Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. A patent owner has the right to decide who may - or may not - use the patented invention for the period in which the invention is protected.

The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent.

Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others.

All patent owners are obliged, in return for patent protection, to publicly disclose information on their invention in order to enrich the total body of technical knowledge in the world. Such an ever-increasing body of public knowledge promotes further creativity and innovation in others. In this way, patents provide not only protection for the owner but valuable information and inspiration for future generations of researchers and inventors.

3 Trademarks

A trademark is a distinctive sign/mark that identifies certain goods or services as those produced or provided by a specific person or enterprise. It may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, three dimensional signs such as the shape and packaging of goods.

A registered trade mark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another person to use it in return for payment.

A trade mark helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs. Registration of trademark is prima facie proof of its ownership giving statutory right and remedies to the proprietor.

A trade mark may be protected for an indefinite period. The initial term of registration is 10 years; thereafter it may be renewed from time to time.

4 Geographical Indications (GI)

GI are signs used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil. They may also highlight specific qualities of a product, which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions.

A geographical indication points to a specific place or region of production that determines the characteristic qualities of the product that originates therein. It is important that the product derives its qualities and reputation from that place. Place of origin may be a village or town, a region or a country. It is an exclusive right given to a particular community hence the benefits of its registration is shared by all the members of the community.

5 Copyrights and related rights

Copyright is a legal term describing rights given to creators for their literary and artistic works. Copyright grants the creator both moral and economic rights.

Moral rights protect those non-economic interests of the creator/author. These include the right to be recognized as the author of a work or the right to object to derogatory treatment of a work.

Economic rights, on the other hand, gives the author the opportunity to make commercial gain from the exploitation of his/her works. This would usually be by licensing others to use the work,

or by selling the rights. Economic rights allow the author of a copyright work to have the exclusive right to authorise or prohibit the following acts:

Reproduction : This covers copying a work in any way. For example, photocopying, reproducing a printed page by handwriting, typing or scanning into a computer, or recording music in a CD or any media.

Distribution: This covers issuing copies of a work to the public. This would include, for example, a book being sold in a bookshop. This right only applies the first time a copy of a work enters into commercial circulation and so would not prevent the re-sale of that copy, for example by a second hand shop.

Rental and lending: This covers renting or lending copies of a work to the public. For example, renting from a video store or loaning a CD from a library.

Public performance: This covers performing, showing or playing a work in public. This would include performing a play in a theatre, and playing sound recordings or showing films in public.

Communication to the public:-This covers communication of a work to the public by electronic transmission. This would include broadcasting a work or putting it on the internet.

Adaptation: This covers the making of an adaptation of a work. This would include making a film out of a novel, transcribing a musical work, translating a work into a different language or converting a computer program into a different computer language or code.

What works are covered by copyright?

- **literary works** which includes things like novels, poems, short stories, periodicals, essays, dictionaries, manuscripts, periodicals and articles. It also includes software, such as smartphone apps, video games and software.
- **Musical Works** consisting of musical notes and lyrics in a musical composition
- **Audiovisual Works** such as films, online videos, television shows, video games etc.
- **Sound Recordings** such as music on CDs, podcasts, and recorded speeches.
- **artistic works** such as paintings, drawings, photographs and sculpture; and
- architectural works including architectural plans, building and any associated drawings; and
- **Dramatic works which** includes plays, operas etc.

Copyright subsists in a work by virtue of creation; hence it is not mandatory to register. However, registering a copyright provides evidence that copyright subsists in the work and the creator is the owner of the work.

To qualify for copyright protection, a work must be “fixed in a tangible medium of expression.” This means that the work must exist in some physical form for at least some period of time, no matter how brief. In addition, the work must be original — that is, independently created by the

author. It doesn't matter if an author's creation is similar to existing works. However, the variation must be substantial in nature and not merely trivial.

It is important to note that copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed.

Any copyright work, which meets the prerequisites for protection may be registered with the Agency.

6 Industrial Designs

An industrial design is an original creation of an ornamental nature, which, when incorporated in or applied to a product, lends a special appearance to it. These characteristics may result from its shape, lines, outline, configuration, color, texture or material.

Legal protection is available for design innovators in Zambia and other jurisdictions across the world. It is focused on protecting the visual features of an article either in two or three dimensions. Industrial designs are applied to a wide variety of products of industry and handicraft items ranging from packages and containers to furnishing and household goods, from lighting equipment to jewelry, and from electronic devices to textiles.

The essential purpose of design law is to promote and protect the design element of industrial production.

7 Layout Design for Integrated Circuits

A layout-design of an integrated circuit refers essentially to the three-dimensional character of the elements and interconnections of an integrated circuit. An integrated circuit is an electronic circuit in which the elements of the circuit are integrated into a medium, and which functions as a unit to perform an electronic circuitry function.

The law protecting the original layout-designs of an integrated circuits in Zambia is the Layout-designs of Integrated Circuits Act No. 6 of 2016. A layout-design may be eligible for registration and protection in Zambia if it is original or consists of a combination of elements and interconnections that are not commonplace among creators of layout-designs and manufacturers of ICs at the time of its creation and the combination, taken as a whole, is original.

Under the Layout-Designs of Integrated Circuits Act, the owner has the right to prevent the copying and commercial exploitation of an original layout-design of an IC. An owner can exercise his rights under the Layout-Designs of Integrated Circuits Act by taking legal action against the infringing party.

The initial term of registration is for 10 years and thereafter it may be renewed for a further period of five years.

8 The Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore

Although International IP law is largely silent on the protection of traditional knowledge, Zambia has put in place a legal framework that seeks to protect access to, and use of, traditional knowledge, genetic resources and expressions of folklore. The law, which is both defensive and positive in nature is known as the 'The Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act No. 16 of 2016.

It is defensive, in the sense that it seeks to ensure that third parties are prevented from obtaining Intellectual property rights for the use of traditional knowledge, associated genetic resources or the expressions of folklore. It is also positive in the sense that it prohibits access or use without prior informed consent of the holder.

8.1 Traditional Knowledge

Traditional knowledge is defined under the Act as “any knowledge, not limited to a specific subject area, technical or medical field associated with genetic resources, originating from a traditional community, individual or group that is the result of intellectual activity and insight in a traditional context and where the knowledge is embodied in the traditional lifestyle of a traditional community or is codified in knowledge systems and passed on from one generation to another”

Like many other African countries, Zambia is endowed with a rich cultural heritage and local communities generally possess valuable traditional knowledge which is often misappropriated for commercial purposes without any benefits to the holders. For this reason, the Act provides a holder has the exclusive right to authorise the exploitation of the traditional knowledge and to prevent anyone from exploiting the traditional knowledge without the holder’s prior informed consent. Further, the Act has made provisions for ensuring that benefits arising from the commercial or industrial use of traditional knowledge are shared with the holder of the traditional knowledge through an access agreement between the holder and user.

8.2 Genetic resources

According to the Act, genetic resource means any genetic material of a biological resource containing genetic information having actual or potential value for humanity and includes derivatives, fauna and flora of terrestrial, aquatic and any other origin which may be used by the holder to obtain specific practical outputs in any field of human activity or derivative.

The legal protection for genetic resources stems from the recognition of the importance of genetic resources and associated knowledge for the provision of food, medicines and other human necessities. Local and indigenous communities have since time immemorial utilized genetic resources for food and medicinal purposes. However, research institutions and private companies have, in the recent years, taken an increasing interest in genetic resources located in developing countries including Zambia. Thus, though Genetic Resources are by nature not intellectual property rights, the Act has provided for the protection of Genetic Resources based on the access and benefit-sharing regulations within the international frameworks defined by the Convention on Biological Diversity and its Nagoya Protocol. In that regard, the Act prohibits access to genetic resources without the prior informed consent of the traditional community in which the genetic resources concerned in located. . Further, the Act requires that the traditional community shall obtain a fair and equitable share from benefits arising from the utilization of its genetic resources. (**See section 32 of the Act**).

For purposes of the Nagoya Protocol PACRA is considered as the Competent National Authority responsible for grant of access permit under the Act, issuance of written evidence that access requirements have been met, and giving advice on applicable procedures and requirements for obtaining prior informed consent.

The Ministry of Land and Natural Resources, on the other hand, is considered as the National Focal Point for purposes of providing information on procedures for obtaining prior informed consent and establishing mutually agreed terms for applicants seeking to access genetic resources or traditional knowledge associated with genetic resources.

8.3 Expressions of Folklore

This is defined under the Act means as any form, whether tangible or intangible, in which traditional culture and knowledge is expressed, appears or manifests. This includes verbal expressions such as stories, poetry, riddles and other narratives, or musical expressions in form of songs; expressions in form of dances or plays, as well as tangible expressions such as drawings, designs, paintings, body painting, etc.

The protection of expressions of folklore is irrespective of the mode or form of expression provided it is the output of collective creativity or individual creativity and it has been developed, maintained or used by the community in accordance with customary laws and practices.

Expressions of Folklore are seen as integral to the cultural and social identities and heritage of indigenous and local communities, reflecting core values and beliefs. Therefore, like Traditional Knowledge, the Act seeks to protect expressions of folklore against misappropriation, misuse and unlawful exploitation. Some of the acts which are prohibited under the Act without the prior informed consent of the traditional community include:

- broadcasting, public performance, communication, distribution, rental, making available to the public and fixation of the expression of folklore or any derivative of the expression of folklore;
- any use of the expression of folklore or adaptation of the expression of folklore which does not acknowledge, in an appropriate manner, the traditional community as the source of the expression of folklore or any derivative of the expression of folklore; or
- the acquisition or exercise of intellectual property rights over the expression of folklore or adaptations to the expression of folklore.

However, the holder or Agency may grant authorization to exploit expressions of folklore on conclusion of a licensing agreement.