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About the Book

This book discusses the theories, practice and emerging trends of intellectual property (IP) law in Nigeria. Specifically, it examines the protection of copyright, patent, designs and trademark – including their limitations and exceptions – under the extant IP regime in Nigeria. It also examines important IP related and cut-crossing topics, such as the protection of traditional knowledge, traditional cultural expression, genetic resources and geographical indications; the protection of plant varieties and animal breeders rights, image rights, personality rights; and issues around character merchandizing. Other topics discussed include trade secret, unfair competition, the interface between IP and gender, and the national, regional and international framework for the protection and promotion of IP. Significantly, the book examines the impact of digitization on IP with particular focus on the implications of emerging technologies such as artificial intelligence and blockchain including non-fungible tokens on the IP system. While Nigeria remains its primary jurisdictional focus, the book draws from the jurisprudence, literature and contemporary practical examples of other jurisdictions and situates them within the context of Nigerian IP law. The importance of the book rests not only on its global outlook, Nigerian focus, and interesting topics covered, but also on its simplicity and clarity of language and the style of presentation adopted. In particular, the book covers recent legislative developments around IP law in Nigeria, Africa, and within the global IP system. In this regard, the book examines the Copyright Act, 2022, Business Facilitation (Miscellaneous Provisions) Act, 2022, Plant Variety Protection Act, 2021, Companies and Allied Matters Act, 2020, and the Nigerian Customs Services Act, 2023. The book also x-rays the provisions of the Protocol on IP Rights to the Agreement Establishing the African Continental Free Trade Area 2018 (AfCFTA) adopted in early 2023 by the General Assembly of the African Union. Overall, the book is designed to be relevant to judges, legal practitioners, law and policy makers, academics, researchers, students, entrepreneurs within the Nigerian IP ecosystem, and members of the public with interest in IP law.

INTELLECTUAL PROPERTY LAW IN NIGERIA

2ND EDITION

Desmond O. Oriakhogba
and Ifeoluwa A. Olubiya

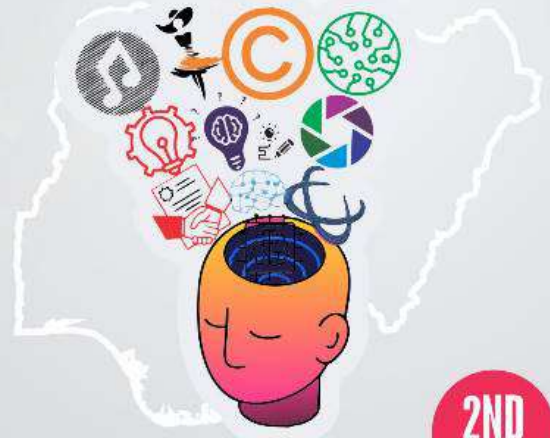


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INTELLECTUAL PROPERTY LAW IN NIGERIA

Emerging Trends, Theories
and Practice



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and Ifeoluwa A. Olubiya

INTELLECTUAL PROPERTY LAW IN NIGERIA:

Emerging Trends, Theories and Practice

Desmond O. Oriakhogba and Ifeoluwa A. Olubiyi

About the Authors

Desmond O. Oriakhogba obtained his LLM and LLB degrees from the University of Benin in 2014 and 2007 respectively, and PhD in commercial law (focus on intellectual property (IP) and competition law) from the University of Cape Town (UCT), South Africa in 2019. He was called to the Nigerian Bar in 2008 and was a visiting researcher in the Centre for Law, Technology and Society, Law Faculty, University of Ottawa, Canada in 2018. He lectures in the University of the Western Cape, **South Africa tutors in** the Distance Learning Program of the World IP Organization (WIPO) Academy. Desmond is widely published both locally and internationally. He has presented papers and spoken on different IP Law topics in diverse fora including WIPO's Standing Committee on Copyright and Related Rights (SCCR) and the WIPO-WTO Colloquium for IP teachers and researchers. Desmond is a Queen Elizabeth Scholar (Canada) and a research collaborator with different international networks including the Open African Innovation Research Network, the International Network on the Right to Research in International Copyright, the Global Network on Copyright User Rights, and UCT's DSI/NRF/SARChI Chair on IP, Innovation and Development. He is the author of *The Right to Research in Africa: Exploring the Copyright and Human Rights Interface* (Cham: Springer, 2023); and *Copyright, Collective Management Organisation, and Competition in Africa: Regulatory Perspectives from Nigeria, South Africa and Kenya* (Cape Town: JUTA, 2021).

Ifeoluwa A. Olubiya obtained her LLB from Obafemi Awolowo University, Ile-Ife and LLM in *Intellectual Property Law and Knowledge Management (IPKM)* from Maastricht University, the Netherlands. Her PhD degree was from the University of Ilorin where she researched into the collective administration of copyright in Nigeria. She has taught and researched into the field of Intellectual Property Law for several years and lectures at the College of Law, Afe Babalola University, Ado-Ekiti (ABUAD). She is a member of various academic and professional bodies including the Nigerian Bar Association (NBA), National Association of Law Teachers (NALT), the Nigerian Association of Teachers and Researchers of IP (NATRIP), Association of Professional Negotiators and Mediators (APNM), Christian Lawyers Fellowship of Nigeria (CLASFON). In 2018, she was selected as part of the Nigerian intellectual property experts to be involved in the 'Training of Trainers: Training Intellectual Property Rights for Judges' program organised by the World Intellectual Property Organization (WIPO), the National Judicial Institute of the Federal Republic of Nigeria and the Nigerian Copyright Commission (Abuja, 2018). Ifeoluwa has published widely in reputable local and international journals and has presented papers at both national and international conferences including the WIPO-WTO Colloquium for IP teachers and researchers. She is a tutor in the Distance Learning Program of the World IP Organization (WIPO) Academy and the author of *The Nigerian Intellectual Property Law Handbook* (Ado-Ekiti: Femfem Publishers, 2019).

INTELLECTUAL PROPERTY LAW IN NIGERIA:
Emerging Trends, Theories and Practice

Desmond O. Oriakhogba and Ifeoluwa A. Olubiyi



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Foreword (second edition)

The first edition of this **work** provided a good foundation and grants the readers a deep insight into understanding the principles and practices of the Nigerian intellectual property system. However, the society is dynamic, and this means that new developments are recorded regularly including on the laws, policies and practices governing the society. This societal dynamism has necessitated **the second edition of this work**.

The second edition of this work provides a confirmation that the authors are keen to keep their readers updated with emerging trends as it relates to both the laws - in its current state and practice - **its** application to our daily lives. After the release of the first edition in 2021, there has been some major developments within the intellectual property **system** including the passage of new **laws** in Nigeria, judicial decisions handed down on key areas of **the** intellectual property law, **new** international arrangements under which Nigeria is obligated among others.

To really live up to the title, the authors have again settled down to search with a fine-tooth comb and identified these changes and developments and they have decided to provide the readers with a clear understanding of how these changes and developments are likely to affect the practice and procedure of **intellectual property** in the present and the nearest future.

The language of the book is simple and clear, allowing both experts and non-experts on the subject matter to understand the details of the topics treated in this **second** edition.

The additions to **the second** edition is timely and exhaustive; it serves as a reference material to **the reader** to help them understand the innovative provisions in the Nigerian Copyright Act that was recently passed into law and their implications, issues relating to artificial intelligence and its interplay with intellectual property, plant variety law and its relevance in Nigeria, judicial decision on image rights and its likely impact after so many withdrawn cases **and of importance the African Continental Free Trade Agreement (AfCFTA) and intellectual property considerations to trade.**

Dr. Desmond O. Oriakogba and Dr. Ifeoluwa A. Olubiya **deserves** our commendation for the initiative and efforts expended on this **second** edition of the book which I believe will be very useful for everyone who is able to lay their hands on it.

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Foreword (first edition)

The phrase *Intellectual Property* (IP) comes across as a broad category of rights sharing common features but at the same time radically different, not only in their substantive provisions but also in their history and philosophical underpinnings. It is therefore an artificial but convenient reference to a body of laws dealing with diverse sub-sets ranging from copyright to the protection of integrated circuits and, more recently, traditional knowledge. This probably explains why an author requires sufficient mastery of the subject and some writing skill to be able to present a coherent text.

Considering the age of its IP statutes and the relatively scanty juridical pronouncements on many aspects, writing on the emerging trends, theories and practice of IP in Nigeria is a bold adventure. An author is confronted with the challenge of correctly distilling the principles in a way that does not run contrary to the local jurisprudence or become an affront to globally accepted legal logic. These are daunting tasks that the authors of this book have carefully overcome through what I believe is the result of painstaking and well-coordinated research to faithfully point the reader to the theories, practices and emerging trends of IP in Nigeria. Both authors have brought their wealth of experience from years of research and teaching to bear in this publication.

IP has become a frontline subject touching various aspects of today's innovation driven and knowledge-based society. More than ever before in its history, humanity is overwhelmed by the sheer volume of IP assets around us and how these affect our everyday life: social life, education, entertainment, health, agriculture, commerce, transportation, spirituality and general wellness. Simple articles such as clothing, cars, telecommunication gadgets and pharmaceutical products all have some IP component. The frontiers are almost limitless as we come to terms with artificial intelligence and our world is moving from the Internet as a simple information super highway to a more complex web of the Internet of things.

In the wake of the COVID-19 pandemic and attendant lockdown, humanity was reminded of its common vulnerability and how close IP is to our daily needs. It was a time for the world to reboot and switch to the so-called *new normal* with technology again redefining how we learn, work, interact and do business. The scope of exceptions and limitations in the field of copyright was overstretched. Now with the

prospects of a vaccine, experts would resume the north-south debate over the ethical balancing of patents against public health needs.

With such an elastic subject to deal with, the authors must be commended for managing the scope and size of a book of this nature. While not losing sight of emerging issues and the global context of the subject, they have succeeded in simplifying the issues for the general reader while not leaving out areas that would be of interest to experts. True to the diverse nature of IP the book is conveniently divided into four parts with Part One touching on the general foundational issues: meaning and objectives of IP, as well as the international, regional and national frameworks for protection. Part Two discusses emerging and cross-cutting global issues some of which are still being negotiated at the international level, including the protection of traditional knowledge, traditional cultural expressions and genetic resources, protection of image rights, character merchandising and far-flung issues such as gender and IP rights. Finally returning to the more traditional subjects, Part Three deals with copyright and related rights while Part Four is on industrial property: patents, industrial designs and trademarks.

Despite the depth and complexity of the subject, the choice of language is deliberately simple to meet the needs of experts and non-experts alike. With appropriate illustrations and stripped of legal jargons, the book is well suited for readers across disciplines. It should be a good primer on the subject and an invaluable guide for further research. I therefore commend it to teachers, students, researchers, lawyers, judges, scientists, policy makers and all who seek to know more about IP in the broad sense.

On behalf of the entire IP community that would benefit from this invaluable work I must applaud Dr. Desmond O. Oriakhogba and Dr. Ifeoluwa A. Olubiyi for this welcome addition to the stock of IP literature, particularly at a time when Nigeria is harnessing its innovative and creative potentials for national growth.

John O. Asein

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Preface (second edition)

Intellectual property (IP) law is a very dynamic field of endeavour. The subject-matter of its protection and the responsibilities it imposes continue to evolve as society develops and experiences technological advancement. As such, IP Law needs to be updated to keep pace with the changes. Law and policy formulators in Nigeria appear to understand this fact because since the publication of the first edition of this book in 2021, Nigeria has enacted some key legislation that relate to the protection of IP rights. The legislation includes the Copyright Act, 2022; Business Facilitation (Miscellaneous Provisions) Act, 2022; the Plant Variety Protection Act, 2021; the Companies and Allied Matters Act, 2020; and the Nigerian Customs Services Act, 2023. Steps are underway for the development of a *sui generis* legal framework for the protection of geographical indication in Nigeria.

At the regional level, African law and policy formulators are also keeping up with the dynamic nature of IP as evidenced by the recent adoption of the Protocol on IP Rights to the Agreement Establishing the African Continental Free Trade Area (AfCFTA). At the global level, negotiators have made significant progress in relation to the protection of traditional knowledge. Indeed, the World Intellectual Property Organisation (WIPO) has scheduled a Diplomatic conference for 2024 to conclude an international instrument relating to intellectual property, genetic resources, and traditional knowledge associated with genetic resources, while work on the development of a framework for the protection of traditional knowledge and traditional cultural expressions will continue. More specifically, there have been several developments in the digital technology space that touch on intellectual property law since the publication of the first edition. For instance, several judicial and administrative actions have been recorded relating to artificial intelligence and the law from foreign jurisdiction that Nigeria can draw from.

Therefore, a quality resource material must capture the foregoing important global, regional and national developments in order to be very useful in the advancement of IP skills, knowledge and development. This is the rationale for the revision and publication of this second edition. Like the first edition, the second edition of this book does not boast of exhaustive discussion of all the issues covered. Rather, this book is an overview of the main issues under the topics discussed with readers pointed to other relevant and authoritative legal resources for further

research. The issues are discussed in simple and plain language to make it appealing and useful to judges, legal practitioners, law and policy makers, academics, researchers, students, entrepreneurs (large, medium and small) in the creative industry and other IP-related sectors, and members of the public with interest in conversations around IP and IP law in Nigeria.

Desmond O. Oriakhogba, PhD

Ifeoluwa A. Olubiyi, PhD

Preface (first edition)

Intellectual property (IP) is everywhere. It finds relevance in every facet of society. It plays a significant role in medicine and health, entertainment and sports, literature and visual arts, broadcasting, business and entrepreneurship, manufacturing and construction. It is also important within the climate change discourse, especially in the area of green technology and agriculture. Further, it occupies a major part of the conversations around the protection of traditional knowledge, traditional cultural expressions and genetic resources. IP has remained in the heart of technological advances and a major driver of the fourth industrial revolution. As such, it continues to be relevant within the digital environment and within conversations around the fourth industrial revolution. Moreover, IP has taken root and continues to form a major subject in conversations around international trade, investment and economic development.

Given the broadness of its reach, IP exists in various forms classified into copyright and related rights, on the one hand, and industrial property on the other hand. Industrial property includes patent, trademarks, industrial designs, and geographical indications. IP issues also arise in related fields such as trade secret, plant variety and animal breeders right, domain name, unfair competition, traditional knowledge, traditional cultural expressions and genetic resources. It continues to emerge and find relevance within other areas, such as human rights, gender equality, competition law and regulation and within conversations around the United Nations (UN) sustainable development goals (SDGs).

IP has continuously been touted as linked to national and global development because of its capacity to promote societal welfare by making much needed knowledge available to the public and empowering innovators and creators economically. Therefore, nations around the world have individually and collectively developed, and continue to develop, legal regimes and normative frameworks to protect the various forms in which IP manifests. The main IP legislations in Nigeria are the Patents and Designs Act, Cap P2, Laws of the Federation of Nigeria, 2004; the Trade Marks Act, Cap T13, Laws of the Federation of Nigeria, 2004 and the Regulations made under it; and the Copyright Act, Cape C28, Laws of the Federation of Nigeria, 2004 and its regulations. Other laws that are relevant to the protection of IP in Nigerian also exists.

Building upon existing literature on IP in Nigeria, this book adopts a comparative approach to addressing traditional and emerging IP issues.

In this regard, it draws from the jurisprudence of major jurisdictions around the globe and international treaties on IP, while examining the emerging trends, theories and practice of IP law from the Nigerian context. This book is divided into four broad parts. Part 1 examines introductory matters such the meaning of IP, the objectives of IP protection, and the theoretical justification and the international and national institutional framework for, IP protection. Part two discusses major emerging and cut-crossing issues within the field of IP, such as the protection of traditional knowledge, traditional cultural expression and genetic resources; trade secret, unfair competition, geographical indications, protection of plant varieties and animal breeders rights; image rights, personality rights and character merchandizing; IP and gender; and the impact of digitization on IP.

Part three of this book focuses on the protection copyright and related rights. Here, this book examines the history of the protection of copyright and related rights in Nigeria; the conditions for the protection of copyright and the types of copyright protected in Nigeria. It also discusses the enforcement and administration of copyright, and the exceptions to copyright in Nigeria. Part four examines issues around the protection, registration, enforcement and exceptions to patent, designs and trademarks rights in Nigeria.

This book does not boast of exhaustive discussion of all the issues covered. Rather, this book is an overview of the main issues under the topics discussed with readers pointed to relevant and authoritative legal resources for further research. That notwithstanding, this book is unique for a number of reasons. Firstly, it examines some emerging and cross-cutting IP issues that are not discussed in the existing literature in Nigeria. Secondly, in addressing the emerging and cross-cutting issues, this book adopts practical examples and cases to bring the issues closer to readers. Thirdly, and importantly, this book adopts a brief writing style without losing its academic flare. In this regard, this book numbers its paragraphs serially, and includes statutory, judicial and academic sources within the numbered paragraphs. It then ends each chapter with a list of academic references. The issues are discussed in simple and plain language to make it appealing to judges, legal practitioners, law and policy makers, academics, researchers, students, entrepreneurs (large, medium and small) in the creative industry and other IP-related sectors, and members of the public with interest in conversations around IP and IP law in Nigeria.

