

AN OVERVIEW ON IMPORTANT FEATURES OF THE PROTOCOL ON INTELLECTUAL PROPERTY RIGHTS TO THE AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA (AFCFTA)



Establishment of the Protocol

The protection and enforcement of intellectual property rights (IPRs) is critical for achieving the objectives of the African Continental Free Trade Area (AfCFTA). Particularly the objectives regarding the sustainable and inclusive socio-economic development, structural transformation, industrial development competitiveness of economies with the continent and global market, through the protocol on Intellectual Property rights these objectives can be easily implemented.

The final draft of the protocol on Intellectual Property rights to the agreement establishing the African Continental Free Trade was adopted in Libreville, Gabon in October 2022.

The Protocol was adopted under the provision of Article 7(1) (a) of the Agreement Establishing the African Continental Free Trade Area, which requires State Parties to the Agreement Establishing the African Continental Free Trade Area to enter into negotiations on intellectual property rights.

The Protocol aims to establish harmonized rules and principles on intellectual property rights, to boost intra-African trade in line with the objectives of the Agreement Establishing the African Continental Free Trade Area and promoting economic growth and development within the African continent, to ensure that, measures to protect and enforce intellectual property rights do not constitute barriers to trade.

The Protocol seeks to ensure that, the implementation of multilateral and bilateral treaties relating to intellectual property rights, prioritise African interests and the protection of African innovations and creativity in Africa.

Objectives of the Protocol

Subject to Article 2 of the Protocol, the general objective is to support the realization of the objectives of the African Continental Free Trade Area (AfCFTA) by establishing harmonized rules and principles on the promotion, protection, cooperation, and enforcement of intellectual property rights.

The Protocol further provides for specific objectives subject to Article 2 (1) (a) (b) (c) (d) (e) (f) (g) (h) (i), which are:

- To support intra-Africa trade;
- To promote African innovation and creativity and deepen intellectual property culture in Africa;
- To promote coherent intellectual property rights policy in Africa;
- To contribute to the promotion of science, industrialisation, investment, digital trade, technology, and technology transfer, and regional value chains;
- To promote and ensure a harmonized system of intellectual property protection throughout the continent;
- To encourage African positions on intellectual property rights, support and promote creative and cultural industries by setting up a legal framework while securing and giving incentives that would help in their development; and
- To contribute access to knowledge and supporting public health needs and priorities of State Parties.

Scope and Limitation of the Protocol

The Protocol applies to all categories of intellectual property rights which include plant variety protection, geographical indications, marks, patents, utility models, industrial designs, undisclosed information including trade secrets, layout designs (topographies) of integrated circuits, copyright and related rights, traditional knowledge, traditional cultural expressions, and genetic resources, and emerging technologies and other emerging issues on intellectual property rights, subject to Article 3 of the Protocol.

However, the rights conferred by intellectual property shall not extend to acts concerning a product covered by or incorporating intellectual property rights, that has been introduced on the AfCFTA market by the right holder or with the right holder's consent, as provided under Article 7 (1) of the Protocol.

Cooperation on Intellectual Property Rights by the State Parties

Subject to Article 22 and 23 of the Protocol, State Parties shall cooperate in the field of intellectual property rights to support intra-African trade, regional value chain, industrialisation and economic growth.

Enforcement of Intellectual Property Rights

Subject to Article 25, all State Parties shall ensure that intellectual property rights holders have the legal mechanism to take the initiative in the enforcement of their intellectual property rights, the importance of procedures for enforcement of intellectual property rights in striking the balance between the interest of right holders and consumers, the procedures for enforcement of intellectual property rights take into account the administrative, technological and financial capacity.

It is important to note that, the protocol subject to Article 27, requires the State Parties to put in place laws allowing judicial authorities to grant injunctions on cases of disputes concerning the infringement of intellectual property rights including the conditions for the grant of injunctions.

Establishment of Committee on Intellectual Property Rights

Article 11 of the AfCFTA Agreement, empowers the council of Ministers to establish the Committee on Intellectual Property Rights. The Committee shall carry out such functions as may be assigned to it by the Council of Ministers to facilitate the implementation of the Protocol, as provided by Article 30 (1) of the Protocol.

The Committee may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.

Establishment of the AfCfta Intellectual Property Office

The Protocol provides for establishment of AfCFTA Intellectual Property Office subject to the Provision of Article 31 (1) of the Protocol. The Intellectual Property Office shall be composed of the AfCFTA Secretariat, Africa Centre for Disease Control and Prevention (Africa CDC) and the African Medicinal Agency (AMA).

Subject to Article 31 (2) of the Protocol, the Council of Ministers shall recommend to the Assembly of Heads of State and Government of the African Union, the adoption of the appropriate governance and administrative structures, functions of the office, as well as, rules and procedures for the administration and operation of the office.

Entry Into Force and Application of the Protocol

It is worth to note that, the Protocol shall be open for signature and ratification by State Parties, in accordance with their respective constitutional procedures, and the Protocol shall enter into force in accordance with the provisions of Articles 23 (2) and 23 (4) of the AfCFTA Agreement, as provided under Article 35 of the Protocol.

Each State Party shall implement the provisions of this Protocol upon its entry into force. The Protocol shall be implemented by the State Party who is regarded as a least developed country within three years from its entry into force, as provided under Article 36 of the Protocol.

Dispute Settlement, Conflict, or Inconsistency with Other Agreements

The Protocol further provides for a solution in case there is any conflict and inconsistency between the provisions of the Protocol and a regional intellectual property agreement, shall be resolved in accordance with Article 19 of the AfCFTA Agreement, as provided by Article 37 of the Protocol.

Further, in case of any dispute arising from the enforcement of the Protocol, such dispute shall be settled in accordance with the AfCFTA Protocol on the Rules and Procedure on the Settlement of Disputes, as provided under Article 38 of the Protocol.

Conclusion

Since the Protocol aims at protection and enforcement of intellectual property rights (IPRs) in Africa, the best will depend on the negotiation, adoption and implementation of the IP Protocol, which can be achieved by domestication of the protocol, supported by strong political will of the member states, to ensure efficiency and smooth implementation. The best outcome is to have a Comprehensive Regional Regulatory Framework in respect to the Intellectual Property Rights (IPRs).

FURTHER INFORMATION:

This editorial is intended to give you a general overview of the Law. If you would like further information and clarification on any issue raised in this editorial, please contact.

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