

**INTELLECTUAL PROPERTY RIGHTS IN UGANDA: REFORM AND  
INSTITUTIONAL MANAGEMENT POLICY FORMULATION**

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**By**

**David J. Bakibinga, Ph.D, (London)  
Professor of Commercial Law and Deputy Vice Chancellor  
Makerere University, Uganda**

## **Summary**

The Paper reviews the Law governing intellectual Property Rights in Uganda, identifies areas requiring reform relative to international treaties and the proposals of the Uganda Law Reform Commission. Finally is treatment of intellectual property rights management geared towards the development of research findings into innovations, transfer thereof to users and private sector aimed at their commercialization and exploitation.

### **A. Introduction**

It is intended to present an overview of the law governing intellectual property rights in Uganda, followed by an examination of areas thereof requiring reform, particularly in view of International Treaties which have introduced change in the intellectual property rights regime. Aspects of reform will also be considered relative to the work and proposals of the Uganda Law Reform Commission in that regard.

A practical consideration of intellectual property relates to the management of intellectual property, which involves the development of research findings into innovations and inventions and subsequently transfer thereof to users and the private sector with a view to commercialization and exploitation.

The discussion is divided into nine sections including the introduction and conclusion and sections dealing specifically with copyrights, patents, trade marks, designs, geographical indications and policy aspects of the management of intellectual property rights.

At the outset it should be explained that *intellectual property* broadly connotes property rights in creations of the mind including inventions, industrial designs, literary and artistic works, symbols and images (*Atwine, 2003*). The legal protection of intellectual property thus identifies exclusive rights of a person to exploit or license particular creations of human ingenuity (*Atwine, 2003*).

### **B. Copyrights**

#### **1. Eligibility**

Works eligible for copyright include literary works, musical works, artistic works, cinematography films, gramophone records and broadcasts [*Copyright Act, S.3 (1)*]. For such works to become eligible for copyright, sufficient effort must have been expended to make the work original in character and the work must have been written down, recorded or otherwise reduced to material form with or without consent or be a work which is intended to be used by the author as a

model or pattern to be multiplied by any industrial process [*Copyright Act, S.3 (2)*].

Copyright is conferred [*Copyrights Act, Ss 2,3,14*] on authors who are Ugandan citizens or are domiciled/ resident in Uganda or a listed country or on a Corporation incorporated in Uganda or a listed country. A work, other than a broadcast, which is first published in Uganda or a listed country and has not been the subject of a copyright by virtue of nationality or residence is also eligible. Copyright may also be enjoyed by Government or a prescribed international body in respect of an eligible work made by or under its direction or control.

The duration of a copyright is generally fifty years.

## **2. Consequences of Copyright**

The owner of a copyright is entitled to the exclusive right to control or do in Uganda or other country the distribution of copies; public performance for payment in the case of literary, musical or artistic works; public exhibition for payment in the case of films; public communication in the case of broadcasts and broadcasting in respect of all the works [*Copyrights Act, Ss 7,8, 10*]

The copyright is, however, limited [*Copyrights Act, S. 7 (2)*] in that it does not apply to the distribution, performance and broadcasting: for purposes of criticism, review or the reporting current events if such public use is accompanied by an acknowledgement of title and authorship; by way of parody, pastiche or caricature; for inclusion in a film/broadcast of an artistic work located in a place where it can be viewed by the public; involving the incidental inclusion of an artistic work in a film or broadcast; involving the inclusion of not more than two short passages of the work where the collection is designed for use in educational institutions and carries an acknowledgement of the title and author of the work; involving the use of the work for purposes of instruction in educational institutions; involving the distribution of sound recording of a published literary or musical work for which fees have been paid to the copyright holder.

## **3. Ownership of Copyright**

The incidents of ownership of a copyright are [*Copyrights Act, Ss.9. (3), 11 (1), (2) and 12 (5)*] the rights to: have the copyright vest in the author; assign ownership, and license the copyright. The infringement of the copyright entitle the owner to damages for the loss arising from the infringement, an injunction to restrain further infringement and an injunction requiring the delivery up to the court and destruction or other disposal of copies or articles directed by the Court [*Copyrights Act, S.13 (1)*].

With regard to licensing, the Minister may intervene to grant a licence in respect of the use of a copyright if the licence has been unreasonably withheld by the owner or has been granted on unreasonable terms [*Copyrights Act, S.14*].

#### 4. Reform

A major weakness of the existing law is that infringement of a copyright is not a crime, civil action for damages and injunction being the only remedies (*Atwine, 2003*). Secondly, there is no legal requirement for the copyrights to be registered, which makes enforcement difficult in comparison with other intellectual property such as Trade Marks (*Atwine, 2003*). Third, the law is outdated having been promulgated in 1964. Consequently, it does not take into account developments, particularly arising from international treaties, which were introduced after 1964.

The treaty which is particularly relevant in this regard is the World Trade Organisation (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) of 1994. In relation to copyrights, TRIPS requires

- (a) Compliance with Articles 1 to 21 of the Berne Convention 1971;
- (b) Protection of computer programmes constituting intellectual creations;
- (c) Recognition of the right by the authors of computer programmes and cinematographic works to prohibit the commercial rental to the public of originals or copies of their copyright works;
- (d) Protection of a work for at least 50 years from the end of the calendar year of authorized publication or within 50 years from the making of the work;
- (e) Limitation or exceptions to exclusive rights should not conflict with a normal exploitation of the work and not unreasonably prejudice the legitimate interests of the right holder;
- (f) Recognition of phonogram performers and producers to prevent the fixation, unfixed performance and reproduction of such fixation as well as the broadcasting by wireless and communication to the public of their live performance and also prohibit direct/indirect reproduction of their phonograms.
- (g) Recognition of broadcasting organizations to restrict
  - (i) the fixation;
  - (ii) reproduction of fixation;
  - (iii) rebroadcasting by wireless mean; and
  - (iv) communication to the public of television broadcasts of the above.

The provision of the World Intellectual Property (WIPO) copyright Treaty, 1996 is also relevant in considering the amendment to the Uganda Copyright Law. Essentially the WIPO Copyright Treaty permits (*WIPO Treaty Art. 8*) authors of

Literary and artistic works the exclusive rights of authorizing any communication to the public of their works by wire or winders means, including making available to the public of their works, in such a way that members of the public may access the works in a place and time chosen by them.

The amendments which take cognizance of the recent treaties would address peculiar issues of ownership arising from the use of computers, the internet and broadcasting and communication using equipment which possesses convergence technology. Convergence essentially means the merger of computing, broadcasting and communication technology, (*Tabaro, 2003*) or the combination of digitization and the development of the interconnecting networks of the World Wide Web (*Permitter, 2001*).

To address the above issues, the Uganda Law Reform Commission has drafted the Electronic Transactions Bill, which has been submitted to the Uganda Government.

## **C. Patents**

### **1. Patentability**

The law (*Patents Act, Cap 216*) defines [*Patents Act, S.8 (1)*] an invention as a solution to a specified technological problem, which may be or may relate to a product or process. However the following are not inventions: [*Patents Act, S.8 (2) (a)*]

- (a) Discoveries and scientific and mathematical theories;
- (b) Plant/animal varieties or biological processes for the production of plants, animals
- (c) Schemes, rules or methods for doing business performing purely mental acts or playing games;
- (d) Methods of treatment of the human animal body;
- (e) Mere presentation of information.

An invention is patentable if it is new, involves an inventive step and is industrially applicable (*Patents Act S.9*).

An invention is new if it is not anticipated by prior art. An inventive step means that having regard to novelty a step would not have been obvious to a person skilled in the art on the date of filing an application for grant of a patent or if priority is claimed on the priority date validly claimed for it (*Patents Act, S.11*). Industrial application means that an invention is capable of being technologically made or used in any kind of industry (*Patents Act, S.12*).

### **2. Grant of a Patent**

An application for the grant of a patent is lodged to the Registrar of patents by the applicant or his agent. Certain particulars should accompany the application. These include: a description of the invention; claim defining the matter to be protected; relevant drawing; abstract containing technical information to be used to interpret the scope of the protection sought and relevant fee.

The application may relate to one or groups of invention which are linked to form a single inventive concept.

Upon being satisfied by the applicant, the Registrar grants the patent and issues the relevant certificate and records the patent in the Register of Patents.

A patent granted to the applicant by the African Regional Intellectual Property Organisation (ARIPO) (*Harare Protocol on Patents & Industrial Design, 1982*) has the same effect as one granted under the Patents Act except where the Registrar has notified ARIPO office that the patent shall be ineffective in Uganda.

### **3. Ownership of a Patent**

#### **(a) Duties**

The Owner of a patent is required to: (*Patents Act, Ss 24, 32*) disclose the invention clearly and completely and also indicate the best method of its execution; work the patented invention within the prescribed time; pay the prescribed fees; pay the annual fee to maintain the application or grant.

#### **(b) Rights**

The owner of a patent is entitled to: (*Patents Act, Ss 25, 33, 34*) the exclusive right to make, use, exercise, vend the invention and preclude any person from exploiting the patented invention without his/her authority; assign or transfer by succession the application for a patent or patent; institute infringement proceedings in court to secure damages, an injunction to prevent the infringement or continuing infringement, any other civil remedy [*Patents Act Ss.26 (1), (2)*]; a hearing prior to a Government directive to exploit the patent [*Patents Act, S.29 (1) (a)*]; payment by the Government or other person for a Ministerial directed exploitation of his/her patented invention [*Patents Act, Ss.26 (1), (2)*] [*Patents Act S.29 (1) (b)*]; appeal to the High Court against the direction of the Minister [*Patents Act, S.29 (2) (a)*] or decision of the Registrar fixing the payment for the exploitation of the invention; [*Patents Act, S.29 (2) (b)*] apply for the extension of the patent after the expiration of fifteen (15) years following the grants; (*Patents Act, S.31*) surrender; some or all the claims in respect of the patent subject to the consent of a licensee thereof; (*Patents Act, S.35*) issue a licence to another person in respect of the patented invention [*Patents Act, S.32*].

### **(c) Limitation on the Owner's Rights**

The use of the owner of a patent are limited to the terms of the claims (*Parents Act, S.27*) and the use of the patented invention for industrial or commercial purposes.

The rights of the owner are not infringed by: (*Parents Act, S.28*) acts done in pursuance of research; acts in respect of articles which have been put on the market in Uganda by the owner of the patent or with his express consent, the use of a patented article on foreign aircrafts, land vehicles or vessels of other countries which temporarily or accidentally enter the borders of Uganda; acts done in good faith before the filing or determination of the priority date of the patent.

## **4. Reform**

A major shortcoming of the Uganda Patents Act is that the requirements of patentability (novelty, inventive step and industrial application) are difficult in the Uganda socio-economic situation. To mitigate this the Patents Act permits the issue of utility certificates where the invention does not fulfill patentability especially the requirement of an inventive step (*Parents Act, Ss 42-3*). The certificate is valid for seven years but may be useless where there is lack of patentability in the form of an invention (*Atwine, 2003*).

With regard to the up dating of the law, the Patents Act is broadly in line with the TRIPS Agreement. However, a controversial provision relates to the right by member states to exclude from patentability, plants and animals other than microorganisms, essentially biological processes for the production of plants/animals other than non-biological and microbiological processes (*TRIPS, Art.37*).

The United Nations Convention on Biological Diversity, 1992 provides for the setting up of protection regimes for plant varieties and recognition of the dependence of local communities on biological resources and the roles that these communities play in the conservation and sustainable use of the resources. Uganda is a signatory to this convention. In pursuance thereof the Uganda Law Reform Commission has drafted a Plant Variety Protection Bill (*Atwine, 2003*). The Bill is aimed at:

- (a) recognizing and protecting the rights of private and public breeds over the varieties developed by them;

- (b) recognizing, protecting and supporting the inalienable rights of the local communities, including farming communities, over their plant, varieties, knowledge and technologies;
- (c) promoting appropriate mechanisms for a fair and equitable sharing of benefits arising from the use of plant varieties, knowledge and technologies; and
- (d) providing appropriate institutional mechanisms for the effective implementation and enforcement of the right of the local communities including farming communities and breeders, and the conditions of access to plant varieties.

The Bill is still under consideration by the Uganda Cabinet although certain aspects of it are covered by the Forests Act.

## **D. Trademarks**

### **1. Definition**

A trademark is (*Trademarks Act, S.1*) a mark used or proposed to be used in relation to the goods for the purpose of indicating a connection in the course of trade between the goods and some person having the right as a proprietor or registered user to use the mark. In relation to a certification trademark this means a [*Trademarks Act, Ss.2 (1), 3 (1)*] mark registered or deemed to have been registered under section 39 of the Act.

### **2. Registration**

#### **(a) General**

The Minister is empowered to designate a registrar of trademarks who keeps a record of trademarks. There is entered in the register: all registered trademarks with the names, addresses and descriptions of their proprietors; notification, assignments and transmissions; the names, addresses and descriptions of all registered users; disclaimers, conditions, limitations and such other matters relating to registered trademarks as may be prescribed. The register is divided into Parts A and B.

#### **(b) Effect of Registration and Infringement**

Registration of a trademark has the following effects:

- (i) It entitles the proprietor to institute proceedings to prevent or recover damages for infringement thereof (S.4);
- (ii) It must relate to particular goods or classes of goods (S.5);

- (iii) It gives the proprietor exclusive right to the use of the trademark in relation to the designated goods subject to any limitations entered on the register (*Section 6(1)(2)*).

*Infringement of a trademark* occurs when a non-proprietor of the trademark or non registered user *uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion in the course of trade in relation to any goods* in respect of which it is registered and in such manner as to render the use of the mark likely to be taken either

- As being use as a trademark; or
- In case of use upon the goods or in an advertisement to the public, as importing a reference to some person having the right either as proprietor or as registered user to use the trademark or to goods with which such person is connected in the course of trade (S.6(1))

There is no infringement of the trademark if:

- (i) The proprietor/registered user uses it as permitted and does not remove or obliterate it or has consented to its use in connection with goods in the course of trade;
- (ii) The use of the mark is reasonably necessary to indicate that the goods form part of or are accessory to other goods in relation to which the mark has been used without infringement (S.6(3));
- (iii) It is one of two or more registered trademarks that are identical or nearly resemble each other in exercise of the right to the use of that mark given by registration (S.6(4)).
- (iv) A person in good faith uses his name or that of the place of business or that of his/her predecessors (S.10(a)).

### **Infringement through Breach of Restrictions**

Infringement occurs where a purchaser or owner of the goods has undertaken not to do the following, but nevertheless does them:

- i. Applying the trademark upon goods after they have been altered with regard to their state, condition get-up; or packing;
- ii. Where the trademark is on the goods, the alteration, part removal or part obliteration thereof;
- iii. Where the trademark is on the goods, the application of any other trademark to the goods;
- iv. Where the trademark is on the goods, the addition to the goods of any written matter likely to injure the reputation of the trademark (S.8).

### **(c) Registrability**

The following elements are essential to registration:

- (i) Name of company/individual/firm represented in a special or particular manner;
- (ii) Signature of the applicant/predecessor in the business;
- (iii) The invented word(s);
- (iv) Word(s) with no direct reference to the character of the goods and not being a geographical name or surname;
- (v) Any other distinctive mark other than the above (S. 11(1))

Destructiveness relates to the goods in respect of the registered trademark (*Sections 11(2), (3), 12*).

Trademark is not registrable if its use is:

- (i) likely to deceive or cause confusion, is disentitled to protection of a court or is contrary to law or morality or is a scandalous design (S.13);
- (ii) In relation of any goods/description of goods identical to a mark belonging to a different proprietor and already registered in respect of the same goods/description of goods or that so rarely resembles such a trademark as to be likely to deceive or cause confusion (S.14(1)).

The court may in special circumstances waive the restrictions above and allow registration on certain conditions/limitations (S.14(2)).

A trade mark may be registered subject to a disclaimer if it:

- (i) Contains any part, which has not separately registered as a trademark;
- (ii) Contains a matter common to the trade or is of a non-distinctive character (S.16).

### **(d) Procedure for Registration**

A proprietor of a trademark should make a written application to the Registrar, who may refuse the application, accept it absolutely or subject to amendments, modifications, conditions or limitations as he/she thinks rights. An application for registration in one part of the register may be treated as an application for registration in another part. The Registrar

should state reasons for his/her decision, which is **appelable** to the High Court (S.19). The application for registration should be advertised normally in the Gazette and other media to enable those opposed to it to give notice to the Registrar, which is referred to the applicant. The final decision of the Registrar is **appelable** in the High Court (S.20).

After the above process the Registrar shall register the trademark either in Part A or B of the Register and issue a Certificate of Registration (S.21).

#### **(e) Duration of Registration**

The registration of a trademark is seven years and may be renewed (S.22).

### **3. Assignments and Transmission**

A trademark is assignable and transmissible in connection with the goodwill of the business; and in respect of all or some of the goods with which it was registered (S.24).

Where trademarks are associated they are assignable or transmissible wholly although for other purposes regarded as separate trademarks (S.25).

### **4. Use and Non Use (S.28)**

A registered trademark may be taken off the register relating to the goods in respect of which it was registered at the request to court of an aggrieved person on two main grounds:

- i. That the trademark was registered without any *bona fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him and that there has in fact been no *bona fide* use of the trademark;
- ii. That five years prior to the date of the application had elapsed during which the trademark was registered and there was no *bona fide* use thereof in relation to those goods.

It is a defence to an action to remove the trademark from the register to show that the goods in question have been sold or traded in a particular place in Uganda and that a person had been permitted under the Act to register an identical or nearly resembling trademark in respect of those goods. In such a case, the court or the Registrar may impose on the registration limitations as deemed proper for ensuring that the registration shall cease to extend to such use.

## **5. Defensive Registration of Trademark (S.29)**

In the case where a trademark comprises an invented word or words so well known in relation to goods in respect of which it is registered and is used and its use indicate a connection between those goods and a person who is entitled to use the trademark, then regardless of neglect of use of the trademark by the registered proprietor the trademark may be registered in the name of the person with whose goods it is connected as a defensive trademark and upon so doing is not liable to be removed from the register.

An originally registered trademark and a defensive trademark are deemed to be registered as associated trademarks.

## **Registered Users (S.30)**

A person other than the proprietor of the trademark may be registered as a registered user in respect of all or any of the goods in respect of which it is registered and with or without conditions/restrictions.

The Act designates registered use to be ~~permitted use~~ which may be varied by the Registrar in respect to goods or restrictions and conditions under which it was granted; cancelled by the Registrar on grounds set out in Section 30(9)(c) and (11).

## **Use of Trademark by a Corporation in Prospect**

The Registrar or Court may permit registration of a trademark in respect of goods where they are satisfied that a corporation is about to be constituted and the applicant intends to assign the trademark to the Corporation with a view to the use thereof relating to those goods by the Corporation (S.31) by any person in respect of origin, mode of manufacture, quality, accuracy; and from goods not so certified (Section 39(1)).

## **6. Certification Trademarks**

A certification trademark is one, which is adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of: origin; mode of manufacture; quality; accuracy; and other characteristics from goods not so certified (Section 39(1)).

## **7. Rectification/Correction of Register**

### **Rectification**

The Registrar, following an application by an aggrieved person, is empowered to make, expunge or vary on entry in the Register of Trademarks arising from: non-insertion in or omission from the register of an entry; any entry made in the register without sufficient use; any entry wrongly remaining on the register; and an error or defect in the entry in the register (S.34).

## **Correction**

Upon the request by the registered proprietor of a trademark, the Registrar makes corrections on the register relating to: particulars of the proprietor; cancellation of a trademark on the register; striking out any goods/classes of goods from those in respect of which a trademark is registered; and entry of a disclaimer/memorandum relating to a trademark (S.36(i)).

## **8. Reform**

Little reform of the trademarks regime is necessary given the provisions of the WTO TRIPS agreement on trademarks (*Articles 15-21*) which largely follow the provisions of the Uganda Trademarks Act.

### **E. United Kingdom Designs (Protection) Act**

The Law provides for the application in Uganda of the Law for the time being applicable to designs in the United Kingdom.

Further, it stipulates that it is a defence to an action for damages for the defendant to prove that he/she had no knowledge or reasonable means of making himself aware of the registration of the design in the United Kingdom (UK).

### **2. Reform (*Atwine, 2003; Manzi, 2002*)**

The law on designs requires amendment to make provision for a law that is cognizant of local Ugandan circumstances. With the advent of the European Union and the United Kingdom's accession thereto, UK law is oriented to European Union Law, which is not necessarily relevant to the needs and objectives of Uganda. Additionally, the law should cater for the state of technology in Uganda, which may not be necessarily compatible with that in the UK.

### **F. Geographical Indications**

#### **1. General**

There is no specific law in Uganda governing geographical indications. However, by virtue of being signatory to the WTO TRIPS Agreement, the provisions of that

Treaty on Geographical indications may be said to be applicable in Uganda. Technically, however, those provisions require domestication into Ugandan law by appropriate legislation. An attempt in this direction is evident from the Draft Industrial Property Bill which awaits consideration by the Uganda Government Cabinet.

## **2. Provision of TRIPS Treaty**

Geographical indications are defined (*TRIPS Treaty, Art.22.1*) as indications, which identify a product as originating in the territory of a member, or a region or locality in that territory where a given quality, reputation or other characteristics of the product is essentially attributable to its Geographical origin. An obvious example of a geographical indication is the wine %Champagne+ which originates in France or %Uganda Waragi+ originating in Uganda.

Essentially TRIPS obliges members to:

- (a) refuse or invalidate the registration of a trademark which consists of a misleading indication and facilitate the prevention of any use which constituted unfair competition;
- (b) protect persons against a geographical indication which is literally true but misleading;
- (c) ignore geographical indications of another member which is identical with the common goods or services, or for products of the vine which are identical with the customary name of a grape variety existing in the territory of that member;
- (d) refrain from protection of geographical indications which are not or cease to be protected in their country of origin or have fallen into disuse in that country;
- (e) provide guidelines for the additional protection of geographical indications for wines and spirits including concurrent protection of homonymous Geographical indications for wines, certain exceptions to substantive rights such as prior rights, the right to use personal names and time limits for registration in certain cases; and
- (f) co-operate in negotiations undertaken in the TRIPS council for the establishment of multilateral system of notification and registration of geographical indications for wines.

## **G. Other Aspects of Intellectual Property**

### **1. Trade secrets**

The WTO TRIPS Treaty requires, the protection of undisclosed information under the Paris Convention, 1967 including: (*TRIPS Treaty, Art.39; Atwine, 2003*) secret information; information which has commercial value because it is secret; and information subjected to reasonable steps by the person lawfully in control of it to keep it secret.

An attempt to domesticate this provision is evident in the Trade Secrets Bill prepared by the Uganda Law Reform Commission. It awaits Cabinet consideration.

## **2. Folklore and Indigenous Knowledge**

The Uganda Law Reform Commission has also prepared a Bill on Folklore and Indigenous Knowledge. The Bill recognizes the mine of knowledge that is unwritten but well preserved by individuals or local communities affecting all types of social activities which must be preserved. The Bill seems to protect the knowledge and innovations of traditional and local people as their intellectual property (Atwine, 2003).

### **H. Formulation of Intellectual Property Rights Management Policy**

It has been realized that one of the ways to encourage the translation of research findings into innovations and commercialization thereof is to have an Intellectual Property Rights Management Policy to facilitate the process.

The body in Uganda charged with Intellectual Property Rights (IPRs) Management is the Uganda National Council for Science and Technology (UNCST). UNCST has conceded that there is no national policy on IPR management. It has recommended that Universities and research institutes formulate their IPR Management Policies, which will eventually feed into a National Policy.

Makerere University, the oldest University in East Africa has formulated an IPRs Policy. The rationale for the policy are to: (*Makerere University Policy on Intellectual Property Rights Management, 2004*)

- (i) Implement the Makerere University Vision of providing research and service relevant to sustainable development needs of society;
- (ii) Commercialize government/University . funded research for the public good;
- (iii) Facilitate the Recruitment, reward and retention of Faculty and staff resulting from the financial proceeds of licensing innovations commercially;

- (iv) Induce collaborations with the private sector generally and industry in particular for the ultimate public good;
- (v) Promote economic activity arising from the products of research and innovation.

The policy defines *intellectual assets and property*. The former refer to all intellectual products that are created by the University staff, while the latter refers to intellectual assets that are protected under the relevant laws including Copyrights, Patents and Trademarks Acts.

The guidelines under the Policy deal with the management of intellectual assets and property. In particular they indicate that:

- (i) Research findings arising from executed research constitute intellectual assets, which, when protected under the relevant laws, are transformed into intellectual property;
- (ii) That persons engaged in approved research should in the case of scientific research maintain a laboratory Note Book of their findings in a specified format;
- (iii) Researchers are required to complete the *Intellectual Assets identification Form* as specified;
- (iv) A research report approved for the award of a University degree or diploma constitutes an intellectual asset, which, which upon protection under the relevant law, is transformed into intellectual property.
- (v) That researchers should seek the assistance of the Intellectual Property Manager in applying for the registration of patents/designs under the relevant laws or trying to commercialize their innovations;

The IPRs policy also defines and describes:

- (vi) The functions of the Intellectual Property (IP) Manager;
- (vii) The inventory of intellectual assets;
- (viii) The process of evaluation of intellectual assets with a view to the determination of their potential for transfer;
- (ix) The intellectual asset transfer plan involving: the identification of the state of development of the asset as a working solution to the identified problem, identification of what else requires to be developed so that the asset is ready for transfer;

- (x) The requirement for the IP Manager to draw up an action plan for the relevant steps from the final development of the innovation to distribution, to proceed;
- (xi) The duties and qualifications of the IP Manager;
- (xii) The Intellectual Asset Identification Form;
- (xiii) The Material Transfer Agreement;

### **Ownership of Innovation/Inventions**

The IPRs policy also deals with issues of ownership of innovations and inventions including patenting and licensing and the University interest in the invention based on its having been realized by a University employee or with University funding and/or resources. Such invention shall be proportionately owned between the University and the inventor(s).

### **Disclosure**

To enable the University to protect University Inventions, University employees and students (including postdoctoral appointees, graduate and undergraduate students) are required to disclose any University inventions to the University before disclosing such discoveries or inventions through publications, presentations or communications with third parties (including research sponsors) in a manner, which may inhibit or preclude the university from obtaining patent protection.

### **Other Matters**

The Policy finally describes:

- (a) the responsibility of the University in managing University Inventions in such a manner as to produce the greatest benefit to the University and the public, although not under a duty to protect the inventions by patent or otherwise;
- (b) the formula for sharing of the proceeds of the innovation as between the inventor(s), major administrative/academic unit and the University on a gradation depending on the amount realized; and
- (c) the overall responsibility for the administration of the policy which lies with the Vice Chancellor through the Deputy Vice Chancellor in charge of Academic Affairs.

## **Conclusion**

An attempt has been made to review the current intellectual property legal regime in Uganda and the need for reform thereof to take into account relevant international treaties to which Uganda is a signatory. In addition, it is evident that there are peculiar aspects of intellectual property in Uganda such as the protection of folklore, traditional knowledge and methods of treatment, which require protection. Efforts to protect these are evident from various Bills, which have been prepared by the Uganda Law Reform Commission and await Government consideration.

At the practical level, institutional intellectual property rights management policies are desirable to facilitate the translation of research findings into innovations, inventions and subsequent commercialization thereof. The example of Makerere University's policy has been given.

## **References:**

### **A. Articles**

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Manzi, P. (2002) *The Role of Patents in the Technological Development of Uganda (Makerere University Master of Laws Degree Dissertation).*

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Tabaro, E. (2003) %*Multimedia Convergence and the Future of Copyright in Broadcasts” Uganda Living Law Journal Volume 1 No.2, pp 179-91*

### **B. Statutes**

Copyright Act Cap 215 (Laws of Uganda, 2000 Edn)

Patents Act Cap 216 (Laws of Uganda, 2000 Edn)

Trademarks Act Cap 217 (Law of Uganda 2000 Edn)

United Kingdom Designs (Protection) Act, Cap 218 (Laws of Uganda 2000 Edn)

### **C. Treaties**

Harare Protocol on Patents & Industrial Design, 1982

WTO, Trade Related Aspects of Intellectual Property Rights (TRIPS), 1994.

### **D. Policy**

Makerere University, *Policy on Intellectual Property Rights Management 2004.*