



COMESA POLICY ON INTELLECTUAL PROPERTY RIGHTS

PART A

COMESA POLICY ON INTELLECTUAL PROPERTY RIGHTS

INTRODUCTION

1. Intellectual Property has become an economically and politically important and at times controversial issue at national, regional and international levels. Intellectual property is critical in key areas, such as, trade and industrial policy, education, public health, traditional knowledge and expressions of folklore, biodiversity, biotechnology, food security, bio-piracy, cultural and creative industries, sport, counterfeits, the internet, the entertainment and media industries, and information and communication technology.

2. In the “knowledge-based and innovation-driven economy” of our times (an economy that creates, disseminates and uses knowledge to enhance growth and development), the protection of ideas, and the promotion of creativity and innovations through IP has become one of the major priorities of firms and nations world wide, but particularly in the developed countries and some advanced developing countries such as China, India, Brazil and South Africa, in order to be competitive in the global economy and international trade.

3. Ownership and distribution of assets in Intellectual Property Rights (IPRs) has become a key priority in international negotiations and international trade. Besides, the continuous shift from a ‘resource-based economy’ to a ‘knowledge-based and innovation-driven economy’ has raised the issue of how knowledge is created, disseminated, retained and used to obtain economic returns by both the firms and the general public. Knowledge embodied in IPRs such as patents, software, and copyright, is becoming a key determinant for companies’ or firms’ and countries’ economic performance and growth as well as a source of income or revenue. Countries or firms which are unable to create IP remain to be net importers and consumers of the IPRs produced in those countries which create assets in IPRs and have incorporated IP as their competitive and growth strategy. The COMESA Member States are net importer of IPRs developed and created from developed economies, as their IP bases are still in infancy or undeveloped.

OVERVIEW OF INTELLECTUAL PROPERTY

4. Intellectual Property is a term increasingly in use today, but still little understood or appreciated especially in many developing countries including in COMESA member states. Yet every activity we do in our daily lives be it commerce, trade, social or cultural is in one way or another affected by IP. From the moment we wake up each morning until we go to bed, our lives are in some way affected by the works, processes and products of IP, such as food we eat and beverages we drink, the newspapers which we read, the news transmitted via satellite on our television, books, magazines, the computers, phones, internet, are all products of IP. Goods and services that are traded within COMESA are subject to IP.

5. Intellectual property protects intellectual creations in the industrial, scientific, literary and artistic fields; and consists of consists of ideas, inventions, technologies, artworks, music and literature, that are intangible when first created, but become valuable in tangible form as products. Intellectual property is a term that broadly refers to creations that result from the mind,

called the human intellect. The IPRs protect the interests of creators by giving them property rights over their creations. .

6. The Convention Establishing the World Intellectual Property Organization (1967) does not seek to define IP, but gives the following list of the subject matter protected by IPRs: literary, artistic and scientific works; performances of performing artists, phonograms and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks, service marks and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. Of these IPRs, patents, copyright and trademarks are arguably the most significant in terms of their economic importance, their historical role in industrialization, and their current standing as major pillars of the international law on IPRs.

7. Intellectual property relates to items of information or knowledge, which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world. The property is not in those copies but in the information or knowledge reflected in them. The IPRs are characterized by certain limitations, such as limited duration in the case of copyright and patents.

8. Countries generally have laws to protect IP for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and to the rights of the public in accessing those creations. The second is to promote creativity and the dissemination and application of its results, and to encourage fair trade, which would contribute to economic and social development.

OPPORTUNITIES CREATED BY INTELLECTUAL PROPERTY

9. In our times, in a “knowledge-based and innovation-driven economy”, IP has become a major tool or catalyst in economic growth and national development, and in wealth creation for individuals, companies, countries as well as regional groupings. It has enabled and facilitated companies to be competitive and grow their brands and goods, products or services both locally and globally.

10. Intellectual property can therefore present enormous opportunities and potential benefits to a nation and a regional grouping if it is properly exploited and harnessed, and can transform the economic landscape of COMESA in the same way IP has assisted the rapid social economic development of some countries.

IP AND ECONOMIC DEVELOPMENT

11. The economic growth and national development as well as the richness of a country used to be determined by factors of production, namely raw materials such as copper, minerals, oil, timber, sea food, water, plantations coffee, tea, cotton, and sisal, and vast land; and labour. The knowledge-driven economy, has however changed this notion in that countries which are now posting huge economic growth and development are countries which have taken steps to invest in IP as well as the necessary human capital required to create IPRs. Thus in a ‘knowledge-based and innovation-driven economy’ the generation, creation, innovation and management of knowledge through IP play a crucial role in wealth creation and national development.

12. Equally in a 'knowledge based economy' IP has become the major determinant between those countries that are industrialized and culturally advanced, on one hand, and those which are least developed and culturally backward, on the other hand. Though the latter countries are endowed with rich resources, they rely on the IP (machinery, equipment, including manpower) developed by the former countries. The developing countries, including COMESA Member States, are net importers and consumers of IPRs and culture created from music, book, and films from the developed world.

13. Leadership and influence in the global economy and in international trade is being measured or determined by its ability to create, innovate and harness knowledge, and convert knowledge into wealth through IP, as is demonstrated by some developing countries such as China and India, and recognition of some developing countries such as South Africa, Brazil and India in the G20. In order to take advantage of the opportunities presented by the 'knowledge based economy' most countries are now investing heavily in the generation, creation, innovation, exploitation and development of intangible assets particularly IPRs and the necessary infrastructure such as Innovation Centres, Technology Parks, and IP Centres of Excellence including as well as policy and legal frameworks and human capital or resources required to produce such intangible assets. The COMESA Member States' development should not largely be premised or dependent on endless export of raw materials with little or no IP value added, which fetch little price or cost less in the global economy as compared to goods or products with high input of IP.

14. Accordingly, Member States will:

- (a) Promote, encourage and facilitate the generation, innovation, creation, development, use, exploitation, commercialization, and licensing of IPRs as well as effective protection of IPRs;
- (b) Promote and facilitate the mainstreaming of IP into all COMESA policies, structures, systems, programs and activities;
- (c) Promote and encourage the mainstreaming of IP into the economic, industrial, technological, social and cultural policies, systems, structures, programmes and activities of the COMESA Member States;
- (d) Take urgent measures to transform COMESA Member States' economies from being 'raw material or resource-based economies' to 'knowledge-based and innovation-driven economies' so as to be competitive in the global economy;
- (e) Encourage the creation of a supportive environment for innovation and creativity including providing incentives and funding of research and development activities, innovation, creativity and IP education as well as the establishment of innovation or technology parks or IP centres of excellence within COMESA Member States;
- (f) Increase the awareness and effective use of IP within the region, particularly by the business community in sectors such as trade, industry, science, and technology;
- (g) Promote, encourage and facilitate the audit or assessment of the IPRs of COMESA Member States and their contribution to the growth and economic development of Member States;
- (h) Encourage innovation and creativity at all levels of economic activities of COMESA Member States as a pre-condition for accelerating cultural, social and economic development;
- (i) Build capacity in institutions and human resources required for IP innovation and creativity; and

- (j) Enhance the capacity of policy and decision makers to fully appreciate the potential benefits of IP in cultural, social and economic development and play an active role in the unfolding global IP arena.

INTELLECTUAL PROPERTY AND TRADE

15. In today's 'knowledge-based and innovation-driven economy' a key priority of manufacturers or producers of goods, products and services as well as their respective nations or regional trading blocs is not the movement of goods or services in themselves either in the domestic, regional or international market but the IPRs behind or incorporated in those goods or products. This has been necessitated first by the fact that economic activities especially in most developed countries are increasingly becoming research- and technology-intensive. Consequently, their export products, both traditional (such as chemicals, fertilizers and pharmaceuticals) and the comparatively new (telecommunications equipment, computers, software), now contain more technological and creative inputs that are subject to IPRs. Manufacturers are therefore interested to ensure that wherever they market their products these rights are adequately protected; enabling them to recoup their Research and Development expenditure.

16. With the removal of restrictions on foreign investment by a large number of developing countries, new opportunities are emerging for the manufacture in these countries of patented products under licence or within joint ventures. However, the willingness of industries in developed countries to enter into such arrangements and to make their technology available depends on how far the IPR system of the host country provides them the assurance that their property rights to technology will be adequately protected and not taken by the local partners using reverse engineering.

17. Technological improvements in products entering international trade have been matched by the technological advances that have made reproduction and imitation simple and cheap. In countries where IPRs are not strictly enforced, this has resulted in increased production of counterfeit and pirated goods, not only for sale in domestic markets but also for export in the international market with the possibility of competing with the legitimately produced or manufactured goods or other products.

18. Goods are treated as counterfeit when they are offered for sale particularly under well-known trademarks which the seller has no authority to use. These are generally labour-intensive products which because of the reputation of the brand name, can be sold at high prices. They include clothing, shoes, watches, cosmetics, leather goods, and households and sporting goods. Pirated goods, on the other hand, are those goods that infringe copyright and related rights. Book publishers, producers of records, discs, films, tapes and cassettes are often the victims of violation of copyright and related rights. Technological progress has greatly facilitated the art of copying. The computer software industry is the leading victim of the speed with which IP can be illegally copied and distributed on an international scale.

19. The concern of trade regimes is that piracy and counterfeit are a disincentive to the developing and creation of IP products and works. It may present a serious danger to the public especially if the counterfeit goods are food, medicines, pharmaceutical or cosmetic products or spare parts. Where IP is weak or not effectively enforced so as to allow piracy and counterfeit to flourish, foreign owners of IPRs stay out of the country and development of local industries is impeded. Furthermore, local IP owners or authorized dealers of IPRs cannot make a living from their rights nor recoup their investment. Local markets are flooded with inferior illegitimate

products and technology is not incorporated in the country's base and infrastructure. Besides, government loses not only revenue as no taxes are paid where there is rampant piracy and counterfeit, but there is loss of employment.

20. In this regard, Member States will:

- (a) Effectively participate in the negotiations where IP issues are considered, whether at the international, regional or other levels in order to ensure pro-development outcomes for COMESA region;
- (b) Facilitate the increase in regional trade in IP-intensive products and the free flow of IPRs using all the available flexibility in international and regional instruments on IPRs;
- (c) Develop an effective IP promotion and protection system within COMESA so as to create incentives for innovation and creativity as well as for foreign direct investment;
- (d) Promote and encourage joint ventures, alliances or licensing of technology as a way of facilitating technology transfer to COMESA Member States;
- (e) Design programmes to promote creative input or IP value chain in the goods produced within COMESA including branding and marketing using IP;
- (f) Promote the use of IP in business strategies by the firms or business community within COMESA in order to be competitive globally and boost export income;
- (g) Promote the effective use and exploitation of the opportunities created by information and communications technology such as internet and e-commerce in the selling, branding and marketing of goods both within and outside of COMESA; and
- (h) Promote collaboration in the fight against production, manufacturing and trade in counterfeit and pirated goods within COMESA.

IP AND CULTURAL INDUSTRIES

21. Cultural Industries are defined as those industries which produce tangible or intangible artistic and creative outputs, and which have a potential for wealth creation and income generation through the exploitation of cultural assets and production of knowledge-based goods and services, both traditional and contemporary. The cultural industries include books, music, writing, printing, advertising; multimedia, architecture, crafts, designer furniture, fashion clothing, film, video and other audiovisual production, graphic design, educational and leisure, software, live and recorded music, performing arts and entertainment, television, radio and internet broadcasting, visual arts and antiques.

22. Cultural industries are a major contributor to the growth and GDP of countries more especially in developed and some developing countries where they are being fully utilized and developed.

23. In the USA, for example, copyright industries in 2007 contributed \$1.52 trillion or 11.05% of the USA Gross Domestic Product (GDP), and employed 5,577,900 representing 4.05% of the total USA workforce. In the period 2006-2007 the USA copyright industry alone contributed 43.06% to the real USA annual growth. The contribution of copyright industries only to the USA economy in 2007 was more than three times the total combined GDP of COMESA which stood at \$345 billion with a population of 416 million.

24. Copyright industries in the EU account for 5.3% of the GDP; produce gross value added of 450 billion Euros, and employ 5.2 million, 3.1% of total EU employment. In the case of China, the book publishing industry produces 60,000 new titles each year with printed copies of 3 billion, with estimated value of US\$5 billion annually. The film industry produces 126 films annually, unit sales of recorded music over 60 million with sales of US\$80 million. Copyright industries in India contributes 5% to GDP; while the film industry produces over 1000 films per year, with annual turnover of US\$1 billion; the book industry produces over 60,000 new titles, with annual turnover of US\$455 million; and the computer software industry employs about 500,000 people, and exports annually are over US\$5 billion in 2002 - 2003, and expected to rise to US\$50 billion in 2009.

25. The COMESA region should therefore critically examine the role IP in boosting the cultural industries, in advancing its aims and objectives as well as the development agenda if it has to be regionally and internationally competitive and secure a meaningful stake and influence in international trade.

26. Member States will:

- (a) Adopt effective policy and legal frameworks to promote and protect cultural and creative industries, and derive the maximum benefits from these industries;
- (b) Improve and strengthen Member States capacities for creating, producing, distributing, marketing, branding and exhibiting cultural industry goods or products as well as facilitating better access to foreign markets;
- (c) Reduce dependence on the copyright and cultural industries products and goods produced outside COMESA;
- (d) Encourage the establishment of galleries of cultural industries goods such as art and handicrafts within COMESA as well as other venues outside COMESA and facilitate better access to foreign markets;
- (e) Ensure the competitiveness of COMESA Member States' copyright and cultural and industries in the global trade;
- (f) Conduct assessment or audit of firms or organizations involved in creating, producing, dissemination and marketing of cultural products or goods and services in Member States and sector by sector (such as book publishing, audio-visual, crafts and visual arts, recording industries, tourism) with a view to evaluating the contribution of cultural industries to social and economic development and poverty reduction in Member States;
- (g) Create fora for exchange of ideas and interaction by stakeholders in the cultural and creative industries such as policy makers, artists, craftsmen, creators, business community, private sector, and co-operating partners;
- (h) Encourage the setting up or establishment of collective management organizations or societies in the copyright and cultural and creative industries; and
- (i) Promote co-operation and collaboration within and outside COMESA on issues regarding cultural and creative industries.

IP AND TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF FOLKLORE

27. "Traditional knowledge" (TK) refers to the tradition-based literary, artistic or scientific works, performances, inventions, scientific discoveries, designs, marks, names and symbols, undisclosed information, and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. "Traditional-based" refers

to knowledge systems, creations, innovations and cultural expressions which have generally been transmitted from generation to generation, and are generally regarded as pertaining to a particular people or its territory, and are constantly evolving in response to a changing environment. Categories of traditional knowledge include agricultural knowledge; ecological knowledge; medicinal knowledge, including related medicines and remedies; biodiversity-rated knowledge; scientific knowledge; technical knowledge; 'expressions of folklore' in the form of music, dance, song, handicrafts, designs, stories and artwork; elements of languages, such as names, geographical indications and symbols; and, movable cultural properties.

28. Traditional knowledge and indigenous innovation systems have contributed significantly to the present body of knowledge possessed by scientists, agriculturists, foresters, and food technologists. Traditional peoples and communities in developing countries are responsible for the discovery, development and preservation of a wide range of medicinal plants, health-giving herbal formulations, and agricultural and forest products. Traditional knowledge is used as an input into modern industries such as pharmaceuticals, botanical medicines, cosmetics and toiletries, and agriculture and biological pesticides. Besides, many communities depend on TK for food, employment, medicine, and livelihoods.

29. However, the recent development in biotechnological sciences and rise in the patents in the field of biotechnology have put tremendous pressure on the TK often located in developing countries including COMESA Member States. Annual Income generated from genetic resources is estimated to be between US\$500 to US\$800 billion. Estimated annual sales of traditional medicine are about US\$43 billion. There are a number of cases by multinationals and researchers in developed countries who use TK without the permission, consent or knowledge of local traditional communities. The illegal exploitation or 'biopiracy' of TK from local communities in developing countries has raised serious concern, requiring the protection of TK through IP. Equally, users of 'expressions of folklore' often neglect or deliberately fail to ask for permission to use the cultural expressions of indigenous communities and to acknowledge the source of the creativity, and sometimes even pass off products and works as authentic expressions or products of a particular people or its territory when in fact they are not. Besides, knowledge and cultural expressions of special sacred or religious significance are often commercialized in ways that indigenous communities do not approve, or may find offensive or morally wrong.

30. Member States will:

- (a) Promote the use of TK, genetic resources (GR) and folklore including the recognition of the rights of TK, GR and Folklore holders and actively ensure they are duly rewarded;
- (b) Secure the protection of TK, GR and Folklore through IP or sui generis systems, to prevent misappropriation, misuse, and exploitation of TK, GR and Folklore;
- (c) Create systems to govern protection, promotion, utilization and further development of TK, GR and Folklore such as creation of databases, development of guidelines for access benefit sharing (ABS), and Prior Informed Consent (PIC);
- (d) Ensure the acknowledgment and recognition of the sources of TK, GR and Folklore by the users as well as obtaining PIC from the holders of TK, GR and Folklore;
- (e) Create forums for exchange of ideas and interaction by stakeholders in TK, GR and Folklore such as policy makers, scientists, research and development

- institutions, business community, private sector, local communities, intergovernmental organizations, and co-operating partners;
- (f) Utilise advantages created by biotechnology to exploit and enhance TK and GR within COMESA Member States, and where necessary through joint ventures, alliances or technology transfer and licensing;
 - (g) Support and participate in the on-going regional and international negotiations on the protection of TK, GR and Folklore;
 - (h) Encourage COMESA Member States to ratify or accede to and effectively implement international treaties such the Convention on Biodiversity (CBD) and International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) that promote the protection of TK and GR; and
 - (i) Co-operate and collaborate within and outside COMESA on issues regarding TK, GR and Folklore.

IP AND INFORMATION COMMUNICATION TECHNOLOGY

31. Information and Communication Technology (ICT) has revolutionized the way firms and individuals conduct business. The ICT such as internet and e-commerce have made it possible for numerous companies and their goods or services to be known globally.

32. Member States will therefore:

- (a) Adopt policy and legal measures to promote the use of ICT by the business community, micro small and medium enterprises in branding, marketing and selling of goods or services locally and globally;
- (b) Mainstream ICT into the cultural, social and economic activities of COMESA Member States; and
- (c) Encourage the Member States to take measures to create competition and reduce the cost of ICT so as to promote access.

IP AUDIT AND VALUATION

33. Tangible assets such as land, labour, and capital used to be the main yardsticks of the economic health of a nation. Today the new drivers of wealth in contemporary society are knowledge-based assets, that is, intellectual property. Intellectual property assets are gaining ground as a measure of corporate viability, competitiveness edge, future performance as well as increased sector or technology influence. Most nations and firms have their wealth stored in intangibles as opposed by tangibles. For example, in Europe intangible assets account for 40 to 60 per cent of hidden value of wealth; and in the US three quarters of the value of publicly traded companies are intangible assets such as ebay, Yahoo, and Goggle. In COMESA companies have more tangible assets as opposed to intangible assets.

34. Member States will:

- (a) Encourage companies within COMESA to undertake audit and valuation of their IPRs, and promote the use of IP as one of the key tools for raising finance; and
- (b) Conduct audit of IP use and creation within the COMESA Member States with a view of assessing their contribution to cultural, social and economic welfare of Member States.

COPYRIGHT AND RELATED RIGHTS

35. Copyright-related issues have become increasingly relevant and important for developing countries including COMESA member States as we enter the information age and struggle to participate and get a state in the knowledge-based global economy.

36. Copyright has stimulated rapid advances in information and communication technologies, transforming the production, dissemination and storage of information as well as marketing of products and services. Equally, copyright has become a major wealth creator and contributor to the GDP of most countries especially developed countries. This has led to the strengthening of both national and international copyright protection. Copyright protects original works of authorship including music, books, poems, plays, films or motion pictures, computer programs, dance, literary works, musical works, works of art, paintings, sculpture, maps and technical drawings, photographic works, and multimedia, among other items. Copyright protects the form of expressions of ideas, not the ideas themselves. The copyright owners enjoy both economic rights and moral rights. Related rights are rights of performers, producers of sound recordings, and broadcasting organizations.

37. Member States will:

- (a) Take policy and legislative measures to promote and protect copyright and related works while bearing in mind the balance that exists between copyright owners or holders and the users of the rights;
- (b) Promote and encourage the Member States to audit copyright works and copyright industries in order to assess their contribution to the cultural, social and economic development of the region;
- (c) Promote and encourage collaboration in protection and enforcement of copyright works within COMESA including fight against trade in pirated copyright works such as music, film or audio-visual products within COMESA.
- (d) Encourage Member States to utilize and exploit to the full the flexibilities or limitations provided in IP international treaties so as to facilitate access to copyrighted works; and
- (e) Develop awareness campaigns about copyright rights for artists, agents, studio managers, consumers, business community, policy makers and enforcement agencies.

INDUSTRIAL PROPERTY

38. Industrial property takes a range of forms which include patents to protect inventions; and industrial designs, which are aesthetic creations determining the appearance of industrial products. Industrial property covers trademarks, service marks, layout-designs of integrated circuits, commercial names and designations, as well as geographical indications, and protection against unfair competition. In some of these, the aspect of intellectual creation, although existent, is less clearly defined. What counts here is that the object of industrial property typically consists of signs transmitting information, in particular to consumers, as regards products and services offered on the market. Protection is directed against unauthorized use of such signs likely to mislead consumers, and against misleading practices in general. Of the IPRs found under the industrial property the most important are patents and trademarks.

39. Member States will:

- (a) Take policy and legislative measures to promote and protect industrial property rights so as to derive maximum benefits;
- (b) Promote and encourage COMESA Member States to audit industrial property rights in order to assess their contribution to the cultural, social and economic development;
- (c) Promote and encourage collaboration in protection and enforcement of industrial property, particularly the fight against production, manufacture and trade in counterfeit goods within COMESA.
- (d) Encourage Member States to utilize and exploit to the full the flexibilities provided in IP international treaties such as the Doha Declaration on the TRIPS Agreement and Public Health so to facilitate access to medicines for all people particularly the marginalised of society; and
- (e) Promote harmonization of industrial property legislation within the COMESA in view of the establishment of the Custom Union.

RECOMMENDATION

40. Intellectual property is an important tool for economic growth and social economic development as well as competitiveness in the global economy and as such can no longer be ignored by any country or a regional trading bloc. It is therefore recommended that COMESA should adopt this IP Policy in order to mainstream IP in COMESA activities.

PART B

THE COMESA POLICY ON COPYRIGHT AND COPYRIGHT RELATED INDUSTRIES

Introduction

1. The Common Market for Eastern and Southern Africa was established by Treaty in 1994 and has 19 member states. The main objective of COMESA is to promote and sustain economic development within the Member States and improve the living standards of the people of the region. The vision of COMESA is to be a fully integrated and internationally competitive regional economic community. To achieve this vision, it is important to ensure the effective protection of copyright and related rights and support the development and growth of copyright industries within the region through a comprehensive regional policy.

2. The copyright policy deals with creative and cultural industries such as music, arts, craft, publishing, film, visual arts, photography, performing arts and software. These are the creative products of the mind. Copyright and related rights being part of the knowledge economy are important for the socio economic development of the region and need to be protected and nurtured. Like other forms of intellectual property such as patents and trademarks, copyright and related rights are a source of economic capital which if harnessed properly will contribute to economic development within member states of COMESA.

3. Copyright protection within the COMESA region is a relatively recent development with most countries adopting copyright laws after independence. The legislative framework has and continues to be influenced by international norms such as the Berne Convention and the TRIPS Agreement. However, most of the countries within the region are yet to recognize the role of copyright in socio economic development. This has led to minimum or little support from the government, which has not encouraged the appropriate development of copyright industries within the region.

4. However, recently, the copyright industries within the Member States have emerged and experience relatively modest growth. It is important to have a clear policy framework to encourage the development of copyright industries and ensure maximum benefits are derived within the COMESA region.

Situation Analysis

5. Protection of copyright and related rights within the COMESA Member States can be traced back to the colonial period. The laws and ordinances were carried over to the post independence period. The laws were amended and continue to be amended to conform to international standards.

6. The member states that are WTO members are expected to ensure that they provide for the minimum standards as stipulated under the Trade Related Aspects of Intellectual Property (TRIPS) Agreement. However, copyright protection is not just about the adherence and conformity to international agreements, it is an important tool in economic development as the member states have creative industries that need to be protected and nurtured.

7. Most of the member states have copyright laws in place but the levels of unauthorised commercial reproduction of creative works is rampant and threatens the very existence of the industry. This may be attributed to several factors such as lack of proper administrative structures, limited enforcement of existing rights, as well as lack of clear government policies on intellectual property rights.

Policy Objectives

8. The main objective of this policy is to encourage and promote copyright protection for socio-economic development within the COMESA member states, recognising that copyright is a major component of intellectual property.

9. The specific objectives of this policy are to:

- a. Encourage creativity and the use of copyright works as sources of intellectual capital for socio and economic development within the region;
- b. Promote and improve capacities at both national and regional level for the creation and commercial exploitation of copyright works;
- c. Create public awareness on the importance of copyright protection and the role of copyright industries in national and regional development of cultural industries;
- d. Encourage the establishment and maintenance of proper institutional structures for administration and enforcement of copyright and related rights including collective management;
- e. Promote the carrying out of periodic national surveys on the economic importance of copyright and copyright based industries among the member states and within the COMESA region. This will provide tangible empirical data that may be used to review, update and improve the performance of the copyright industry as well for planning purposes and allocation of resources;
- f. Encourage regional cooperation in the administration and enforcement of copyright and related rights. This will include the harmonisation of national laws within the region;
- g. Promote the establishment of national and regional associations to assist maximum utilisation of the potential of the copyright and cultural industries as well as copyright at large;
- h. Encourage the development of a human resource base on the administration and enforcement of copyright and related rights;
- i. Link copyright protection and the growth and preservation of cultural industries within the region;
- j. Affirm the rich and diverse culture and traditional cultural expressions and ensuring that these are included in the various national policies such as education and culture and encourage the formation of industry associations that will promote their interests within the region;
- k. Encourage the protection of traditional cultural expression and works inspired by traditional knowledge such as handicrafts, sculptures, and textiles;
- l. Improve the living conditions of the rights holders such as the musicians, poets, performers, writers and film producers and communities within COMESA;
- m. Ensure comprehensive legal protection of copyright and related rights including the effective enforcement of copyright through the use of anti piracy security devices, border measures as well as efficient judicial processes;
- n. Identify the opportunities available within the region for the growth and development of copyright and copyright based industries;

- o. Encourage research on copyright and related rights as well as creative and cultural industries in relation to social and economic development;
- p. Encourage private public partnerships in the administration and commercial exploitation of copyright and related rights; and
- q. Promote the valuation of copyright and related rights and the use of intellectual property in copyright as collateral for enhancing copyright and cultural industries.

Applicability

10. The policy will be applicable to all member states of COMESA.

Benefits

11. A copyright policy will ensure that the legal and institutional framework on copyright and related rights within the region is efficient and effective. This will ensure creative industries are recognised as essential for economic development. The policy will encourage member states to provide for creative industries within their planning mechanisms and ensure proper allocation of resources.

Role of COMESA Secretariat

12. The COMESA secretariat has a role to play in fulfilling these objectives. Its role includes:

- a. Facilitating the process of harmonisation of copyright laws;
- b. Proposing guidelines for the comprehensive legal and institutional framework for administration and enforcement of copyright and related rights;
- c. Providing the necessary expertise in reviewing, and updating the existing laws within the member states;
- d. Providing professional services in management, administration and enforcement of copyright and related rights;
- e. Providing incentive and motivation for creators of copyright work; and
- f. Encouraging the participation of member states in international fora on matters of copyright and related rights especially in relation to trade and development.

Copyright

13. Copyright is an exclusive right granted to the owner for creative works of the mind for a limited period of time subject to exceptions and limitations.¹ It is the right granted to literary, artistic and musical works.

14. Related rights refer to the rights granted to performers, producers of sound recordings as well as broadcasting organisations. These rights are dependent on the underlying copyright works such as music, scripts, film and poetry.

¹ These exceptions and limitations include fair dealing such as the use of the works for educational purposes, for purposes of news among others. In other jurisdictions such as the United States, the permitted uses fall under the fair use doctrine.

Publishing

15. The publishing industry is an important aspect of economic growth and development. Through the publishing industry, member states have access to teaching and learning materials which are essential in the education sector and the promotion and preservation of culture.

16. Education is one of the main development pillars within the region. The publishing industry covers printing, book publishing, bookshops, press, and literature. Proper copyright protection and administration is essential for the growth and development of this sector.

Media and Advertising

17. Dissemination of information and knowledge is part and parcel of our day to day lives. The media has become a powerful tool that may be used to foster development in all spheres of our lives. The media is the conveyor of values be they political, economic, social or cultural. Broadcasting stations and more recently the internet and mobile phones provide a quick and reliable means of relaying information efficiently and at a reasonable cost.

18. Advertising is not only a marketing tool but also a source of income for the creative authors. It is through their creative authorship that this sector of the industry is able to develop and grow. The rights of the authors and rights holders in this sector have to be secured and enforced to encourage creativity and provide incentives.

19. The media and advertising cannot survive without the creative authors. It is important to ensure that there is a proper regulatory framework within the member states to protect the interests of the authors as well as to ensure legitimate use of works.

Computer Software

20. Computer software is protected under copyright law as a literary work. Software has become an integral part of our day to day lives. Software is used in our computer operating systems, mobile phones, business transactions, education, music, film, media to name a few.

21. There is no limit as to the use of software. However, the systems in place do not guarantee protection to the creators of computer software, locking in technology that is vital for development within the Member States.

22. Many software developers fail to release their products into the market due to fears of unauthorised commercial use by third parties. Member States should endeavour to put in place legal mechanisms to reduce the levels of unauthorised commercial use as well as provide incentives to the software developers within their respective countries.

Music

23. Music, as part of the entertainment industry has over the years grown within the member states with many challenges especially in relation to the unauthorised commercial use of music. The music industry needs to be nurtured and promoted as a source of income and employment especially among the youth.

24. Music not only provides entertainment but also promotes culture. It provides income to the various parties involved such as the composers, authors, music publishers, radio and television stations, mobile phone companies, producers of sound recordings, manufacturers of audio and audio visual devices, performers, studio owners, manufacturers of musical instruments among others.

25. Member States are encouraged to promote music as a business in addition to entertainment and to provide the necessary structures to ensure that the industry grows and is protected from negative influences.

Film

26. The growth of local film industries within the COMESA region, save for Egypt has been slow and hampered by lack of capital, incentives for the rights holders and lack of clear policies on the development of the industry.

27. The member states should provide funds for the development of this sector through a fund. They could provide an enabling environment for the development of public private partnerships through various initiatives such as establishment of film commissions or other relevant bodies to create a link between the Government and the film industry.

28. The members states should endeavour to exchange the best practices in the film industries through the organisation and participation in national and regional film festivals.

Theatre and Performing Arts

29. Plays, dances, poetry recitals and other performing arts are important not only as a form of entertainment but as an educational tool. The member states should recognise the importance of performing arts and provide for institutional frameworks to allow for the growth of this sector. This would include the provision of facilities such as performing arts centres.

Visual Arts and Photography

30. Visual arts include but are not limited to paintings, designs, cartoons, illustrations, drawings and layouts. These are used in other copyright sectors such as publishing, advertising, print and electronic media as well as audio visual works.

31. They are also important in education as well as creation of public awareness. There is a need to recognise visual arts and photography at national level and encourage their development in all sectors.

Collective Management Organisations

32. Collective Management Organisations are organisations set up to collect and distribute royalties on behalf of the rights holders. These are found in the areas of music, film, books and publishing, visual arts as well as performing arts.

33. Member States should facilitate the formation and administration of collective management organisations to ensure that the royalties are collected and distributed effectively and efficiently. This will require the inclusion of collective management within the legislative and administrative framework of copyright.

Expressions of Traditional Cultural Expressions

34. Traditional Cultural Expressions such as folktales, poetry, riddles, folksongs and music, folkdances music instruments, as well as folk art and craft form the core of our cultural industries. They have the potential to provide intellectual capital if properly harnessed.

35. Clear guidelines will be provided for the protection and exploitation of these works.

Valuation of Copyright

36. Copyright is often viewed as an intangible public good. However, copyright industries, where properly administered and protected are a huge industry, and provide income and employment.

37. The COMESA member states encourage valuation of copyright works at the national and regional levels. This will assist the provision of capital to the industries by both the government and the private sector and generate resources within the copyright industries.

Research

38. Comprehensive research will be undertaken on the economic value of copyright and copyright based industries within member states, and on regional and international developments that affect the industries.

Legal Framework

39. The Member States will provide the necessary legal and administrative framework for the proper administration and enforcement of copyright and related rights. They will develop institutional frameworks to reduce the levels of unauthorised commercial use of copyright protected works. Member States will participate in international and regional norm setting processes and ensure conformity with international standards.

Commercialisation of Copyright works

40. Member States will facilitate the commercialisation of copyright works, provide the infrastructure and offer competitive goods in the global market.