

Zimbabwean Intellectual Property Laws: Lessons for SMEs: A Narrative Review

Cryin Ngonisa

Chinhoyi University of Technology PhD Student

DOI: <https://dx.doi.org/10.47772/IJRISS.2023.70841>

Received: 28 June 2023; Revised: 19 July 2023; Accepted: 24 July 2023; Published: 21 August 2023

ABSTRACT

Small and Medium Enterprises (SMEs) play a crucial role and contribute significantly to the economic growth and social development by creating jobs and poverty reduction of countries either developed or developing. On the other hand there is increase in intellectual property infringements and SMEs have not been spared world over. In any effort to protect innovators, governments have enacted laws and Zimbabwe has not been an exception. The Constitution has been used to derive the laws on property rights. Both empirical and theoretical literature review were done on studies done elsewhere and laws of Zimbabwe respectively. The findings from the literature review show that authorities in the world and Zimbabwean laws support innovation and SMEs are protected by the laws that are enacted. Resultantly, it is recommended that its laws must be aligned with the current trends to arrest changes in technology.

Keywords: Intellectual property, laws, small to medium enterprises, Constitution

INTRODUCTION

SMEs face noteworthy risks because they often have scarcer resources and inadequate know-how in Intellectual Property (IP) issues when compared to the larger conglomerate corporations (Ncube A, 2017). The effective running of IP is crucial for identifying useful knowledge and for seizing the value of SMEs' intellectual property rights (IPR). It is authoritative for SMEs to take steps towards a proficient and comprehensive IP management capacity and ability. Generally speaking, SMEs must recognise the critical significance of IPR in their corporate strategy (Ncube C.B 2013). For example, SMEs need to comprehend the enormous worth of patent information. Currently, there is still a deficiency of understanding and gratefulness of this resource. Challenges faced by SMEs include lack of appreciation of the use of patent data as a business tool, low levels of intricacy as to how to access patent material, absence of knowledge as to where to get patent information, insufficient level of skills to be able to extract and use the information and nonexistence of indebtedness of patent information as an vast source of technical facts.

Intellectual property law deals with the security of imagination and innovation (Ross L et al 2018). Zimbabwean laws supports a number of intellectual property rights that need formal registration with the relevant authorities (Shonge. R, 2018). The relevant authorities include Zimbabwe Intellectual Property Office (ZIPO), the African Regional Intellectual Property Organisation (ARIPO) and the Madrid International Trademark System among others.

Many SMEs may be unaware that they hold IP or that they have value. This means that many are missing out on the opportunities to improve their businesses and grow. In this 4IR period, IP products encourage innovativeness and creativity which in turn increases economic development and prosperity in a country.

The main aim of this study was to conduct a narrative review on the benefits of Zimbabwean laws on SMEs intellectual property innovations. The research addresses the following research question: What are the

benefits of legislating intellectual property rights on SMEs in Zimbabwe?

LITERATURE REVIEW

Constitution of Zimbabwe

This is the supreme law of Zimbabwe and each law has a bearing from this. Section 71 of the Constitution of Zimbabwe gives rights to property. Property is defined as property of any description and any right or interest in property. The Constitution goes further to provide that every person has the right, in any part of Zimbabwe, to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms of property, either individually or in association with others and no person may be compulsorily deprived of their property unless there is a law to that effect and the law is interpreted by the Courts. Property implies tangible or intangible, thus IP is provided for and cannot be deprived from the SMEs or the owner.

Patents

The Patents Act [Chapter 26:03] affords for the registration and protection of patents. A patent is a lawful document granted by a Patent Office for the protection of creations that are new, imaginative and mechanically applicable. The vital features of the discovery must not have been circulated in any language in any form, used or recognized before the date of the submission for a patent. The practical answer for the problem or requirement for which the invention was known and fashioned should not have been clear to a person expert in the field of the know-how of the invention. The discovery must be beneficial and proficient of carrying out its purpose in the method designated in the patent application. The patents are can be registered for inventions in any ground of technology including enhancements on prior inventions. Patents may recount to objects of manufacture, chemical compositions or combinations and automatic devices. They are capable of communication by assignment, licence and operation of law.

Industrial Designs

The Industrial Designs Act Chapter 26:02 guards those topographies of shape, configuration, pattern or adornment which when used on an article by any industrial process or means to make a complete article, it looks artistically attractive. The inventor or writer of an industrial design is well-maintained as the owner of the design. The owner of the design is given the right to keep his designs and to register them under the Act and this enables him to enjoy the benefits of his inventions.

Integrated Circuit-Layout Designs

The Integrated Circuit-Layout Designs Act Chapter 26:07 affords for the recording and safeguard of integrated circuit-layout designs. These narrate to the practical design of the three-dimensional nature of all or some of the electrical, electromagnetic or optical elements and circuitry of an integrated circuit and comprise a design of an integrated circuit that is planned for assembly. The lawful result of registering of a layout design is that third parties are forbidden from replicating the whole or any part of the layout design. They are also barred from commercially introducing, selling or distributing the design or an integrated circuit that integrates the design or broadcasting an article that combines the design.

Copyright and Neighbouring Rights

The Copyright and Neighbouring Rights Act Chapter 26:05 describes the type of works that are qualified for patent protection in Zimbabwe as well as the works that succeed for shield as artists' rights, everything of legends and ethical rights. Works that are eligible for rights protection include literary works, sound recordings, artistic works and audio-visual works. The Copyright Act brands a difference between the formation of a copyright work and the entitlement of the copyright in a work. In some orders, the invention

of a copyright work may not correspond with the ownership of the copyright in that work. An example is a guitarist who strums strings for the band leader. The Copyright Act also protects performance rights, recording rights and moral rights.

Trade Marks

The Trade Marks Act Chapter 26:04 offers for the registration of trademarks as well as other marks. A mark is any symbol capable of graphic illustration and capable of identifying goods or services of one enterprise from the other. The condition for registering of a mark as a trade mark is that it must be unique or capable of being distinct. Registration excludes third parties from using identical marks or bafflingly similar marks. The marks are local and enforced in countries in which they are listed, used and upheld. For Zimbabwe, trademarks they are registered with ZIPO, ARIPO under the Banjul Protocol on Marks and the World Intellectual Property Office under the Madrid System.

Geographical Indications

Under the Geographical Indications Act Chapter 26:06 there is forbidden sale, importation, export and manufacture of any invention to which a deceptive geographical indication has been applied. Geographical indications recognize a product as originating in a particular area, where some quality, standing or other specifics of the product is basically attributable to its geographical origin. A geographical indication is said to be confusing if it submits that the product comes from an area other than its real area of origin or if it misinforms the public as to the area of origin of the product.

Criminal Law (Codification and Reform) Act Chapter 9:23

The Act provides for punishment to unauthorised access to computers in section 163. This protects the SMEs by restricting the innovations in IP from falling in wrong hands since most IP innovations are intangible and need to be stored in computers. Moreover there are other people who are evil minded and the Act also provides for punishment against those who deliberately introduce computer virus into computer or computer network on section 164. This enables to safeguard IP from attacks that would have been kept in the computer or computer network. Section 165 of the same Act does not allow unauthorised manipulation of proposed computer programme. This supports innovation by SMEs which may be in the IT sector.

Plant Breeders Rights

There is a Registrar of Plant Breeders Rights. This is provided for by The Plant Breeders Rights Act [Chapter 18:16 which provides for the registration and protection of rights in respect of some varieties of plants. The plant breeders' rights afford formal safety for new varieties of plants like maize and citrus. A plant variety is seen as new if prior to the date of the request for registration in Zimbabwe it was not vended or advertised in Zimbabwe. The plant variety must be diverse from any other make in the field. A submission for plant breeder's rights may be done by the breeder of the new variety being introduced. The rights given to the holder of plant breeder's rights can be allocated, licensed and otherwise conveyed by action of the law.

Empirical review

In a study by Schneider (2005) who sought to test the impact of IPRs protection, international trade and foreign direct investment on innovation and economic growth. In the study innovation was measured as the number of United States patent requests made by residents of each of the countries deliberated. It also measured for internal factors such as the power of IPRs protection. It was established that there was a remarkable difference between developed and developing countries in because IPRs protection had a zero or undesirable correlation with innovation in the developing country constituent of the sample.

Sukarmijan S(2014) did a research in India and resolved that there was need to reinforce communication between IP offices, SME sustenance institutions, business associations, national, regional and local authorities and other appropriate institutions with an opinion to better identifying the IP needs of businesspersons and SMEs and the obstacles to a more operative use of the IP system by entrepreneurs and SMEs”

METHODOLOGY

The researcher used narrative literature review. He based the study on secondary data. Narrative literature review gives a comprehensive perspective on specific topic (Turnbull, 2023). This review involved gathering, critiquing and summarising journal articles and Zimbabwean Acts of Parliament about the intellectual property and how they support innovations by SMEs in Zimbabwe. The review was for the period between 2021 and 2022. The literature being reviewed was taken from Google Scholar.

REVIEW FINDINGS

It was found that laws of Zimbabwe support intellectual property rights. This in turn benefits the country by protecting unique ideas and creation, accelerating of business growth, enhancement of market value of businesses, creation of jobs, conversion of innovative ideas into profit making assets, raising finance for businesses, protection of consumers and families and enhancement of export business opportunities. IP laws help in advancing developing creative and appealing designs by SMEs as well as effectively marketing their products and the establishment of new markets locally or internationally.

RECOMMENDATIONS FROM LITERATURE REVIEW

Existing laws must be enforced diligently in order to get maximum protection of intellectual property rights. Laws must also be aligned with current trends in this 4IR era. It is also significant for owners of intellectual property to safeguard that they record their rights in order to be secured more easily in case of infringement.

REFERENCES

1. Ncube, A (2017). Intellectual Property protection for enterprises and SMEs. Retrieved from The Chronicle: <https://www.chronicle.co.zw/intellectual-property-protection-for-enterprises-and-smes/>
2. Ncube, C. B.(2013). Harnessing Intellectual Property for Development: Some Thoughts on an Appropriate Theoretical Framework. Retrieved from <http://www.scielo.org.za/pdf/pej/v16n4/11.pdf/>
3. Ross, L., Msiman, N., & Scorer, M. (2018). 7 Key Insights on Zimbabwe’s New IP Policy And Implementation Strategy. Retrieved from <https://www.adamsadams.com/insights/news-zimbabwe-ip-policy-implementation-strategy/>
4. Shonge, R. (2018). Utilization of IP Data in the Zimbabwe Digital Economy. Retrieved from <https://www.researchgate.net/profile/Ramsay-Shonge/publication/325477908-Utilization-of-IP-Data-in-the-Zimbabwe-Digital-Economy/links/5b1061660f7e9b4981006ec1/Utilization-of-IP-Data-in-the-Zimbabwe-Digital-Economy/>
5. Constitution of Zimbabwe. Government Printers, Harare
6. Criminal Law (Codification and reform) Act Chapter 9:23. Government Printers, Harare
7. The Copyright and Neighbouring Rights Act Chapter 26:05. Government Printers, Harare
8. The Geographical Indications Act Chapter 26:06. Government Printers, Harare
9. The Industrial Designs Act Chapter 26:02. Government Printers, Harare
10. The Integrated Circuit-Layout Designs Act Chapter 26:07. Government Printers, Harare
11. The Patents Act Chapter 26:03. Government Printers, Harare
12. The Plant Breeders Rights Act [Chapter 18:16. Government Printers, Harare

13. The Trade Marks Act Chapter 26:04. Government Printers, Harare
14. Turnbull D (2023) Systematic narrative hybrid literature review: A strategy for integrating a concise methodology into a manuscript. Social Sciences and Humanities open. Elsevier. <https://doi.org/10.1016/j.ssaho.2022.100381>