








### Gaborone (HQ)

-  Kgale Mews, Plot 115, Unit 19,  
Gaborone International Finance Park
-  +267 74 081 221  
+267 3116371
-  [info@gobhozalegalpractice.co.bw](mailto:info@gobhozalegalpractice.co.bw)  
[www.gobhozalegalpractice.co.bw](http://www.gobhozalegalpractice.co.bw)

### Maun (HQ)

-  Plot 92, Unit 2, Mathiba Road,  
Opposite Maun Airport
-  +267 680 1030  
+267 71 421 146

## KNOWLEDGE ECONOMY AND INTELLECTUAL PROPERTY RIGHTS IN BOTSWANA: IMPLICATIONS FOR ORGANISATIONS

### 1. INTRODUCTION

Knowledge economy has become a buzz term everywhere, be it in government circles, non-governmental organizations, the private sector and the academia. It may be defined as an economy where knowledge is acquired, created, disseminated and used effectively to enhance economic development. Intellectual property rights are necessary for knowledge-based industries. For the knowledge economy to flourish, one aspect which needs to be taken care of is the protection of intellectual property, which is the know-how that comes from a creative thought process. Intellectual property law protects the ownership of creations, such as inventions, designs, literary and artistic works. It seeks to reward and protect the fruits of intellectual endeavor.

This article discusses the importance of intellectual property to organizations. The next section gives an overview of intellectual property rights. This is followed by the implications of such rights for organizations in the context of the knowledge economy. It will wind up with some observations and a conclusion.




### 2. AN OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS

#### 2.1 Confidential Information



Where an idea has been generated and is being actioned, even if the creation is still incomplete, such an incomplete creation can still be protected as confidential information. Confidential information covers aspects such as business proposals, unfinished manuscripts and information provided in failed business deals and



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negotiations, among others. Interestingly, sometimes a creation may be complete but, as a matter of intellectual property strategy, it may still be kept as a secret. Such a creation can still be protected under confidential information. Examples are the *Coca-Cola* recipe and other recipes; and some manufacturing processes. Though such processes and methods may qualify to be protected as patents, an organization may still find it more advantageous to keep it as a secret. Thus, there can be some overlap in different types of individual property rights, and the organization has to choose the most appropriate protection under the circumstances.

## 2.2 Industrial Property and Copyright




Where a creation or invention is complete, one has to find an appropriate way of protection. There are many ways in which creations may be protected depending on the nature of the creation. In general, some would be protected as industrial property and some, as copyright. Industrial property includes patterns, designs and integrated

circuits. A patent is a title which gives exclusive rights to any invention which is protected in terms of the Industrial Property Act, 2010. An industrial design can be defined as any composition of lines or colors or any three dimensional form, whether or not associated with lines or colors, which gives a special appearance to a product of industry or handicraft. An integrated circuit means a circuit, in its final or intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material and that is intended to perform in electronic function.



The Copyright and Neighboring Rights Act, 2000 (as amended), defines copyright as a set of exclusive rights granted to the author or creator of an original work, including the right to copy, distribute and adapt the work. The protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts. Traditionally copyright covers



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literary and artistic works which includes books, speeches, dramatic works, works of architecture, audiovisual works, drawings, paintings, photographic works and works of applied art. The modern copyright also covers computer programs and databases. The object of copyright is to protect creative individuals such as authors and artists from having their work copied or reproduced without their authorization. The legal protection is automatic. This means that a work protected by copyright does not have to be registered in order to gain legal protection.

The core copyright industries include press and literature, music, motion picture, photography, software and databases, visual and graphic arts, advertising services. Other industries include films, museums, and libraries. Wider cultural industries would be publishing, heritage services, publishing and print.

### 2.3 Unlawful Competition and Trademarks




When a creation or an invention is complete, it has to go to the market. There are names, symbols, logos which are associated with products or services. Where these are registered, they are usually protected as trademarks under the Industrial Property Act, 2010. Where the marks or names are not registered, they are still protected in delict under the general election of unlawful competition or under other specific delicts such as passing off and injurious falsehood. Passing off is where one person makes a representation that his business or merchandise or both, are connected with those of another. Injurious falsehood is a delict which arises where there is an intentionally false statement concerning the plaintiff which statement causes patrimonial loss or damage to the plaintiff.

### 2.4 Indigenous Knowledge Systems



Indigenous knowledge systems encompass traditional knowledge and traditional



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cultural expressions. Traditional knowledge refers to the content of know-how (indigenous science) developed and transmitted through traditional, intergenerational means. There is a distinctive link with the community that identifies with it. Traditional cultural expressions, also known as ‘expressions of folklore,’ are a distinctive form of cultural expression which is part of a cultural life of a traditional community, developed and transmitted through traditional intergenerational means.

### 3. INTELLECTUAL PROPERTY AND IMPLICATIONS FOR ORGANISATIONS

It has been highlighted above that the intellectual property system recognises innovation, creativity and distinctive reputation. It creates legal measures against illegitimate or unauthorised use of subject matter by third parties. Creation of knowledge needs the support of strong intellectual property rights. Organisations should realise that intellectual property




forms part of the assets of an organisation. They should be aware of what intellectual property they have or may potentially have as part of their sound management of intellectual property rights. Organisations must be familiar with the legal aspects of intellectual property rights management. Furthermore, they must know when to call on expert and professional advice.

Intellectual property rights are a subject which is important to any organisations. For those which generate intellectual property, they need to appreciate how best to exploit, protect and enforce their rights, especially against competitors who may want to use such intellectual property without authorisation. On the flip side, organisations which may not be owning any intellectual property may want to know how to avoid infringing the rights of others. The remedies against infringement may cost a fortune to an organisation.



Organisations, especially those which deal with research and innovations need to have an intellectual property policy in place.



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Such a policy would help to prevent disputes which arise within an organisation pertaining the ownership and exploitation of intellectual property. An example is a dispute over the ownership of intellectual property where there is an invention by an employee. An intellectual property policy should also reflect aspects of the digital environment which organisations now operate in.

#### 4. CONCLUSION

This article has discussed intellectual property rights and their implications for organizations in a knowledge economy. It has been emphasized that intellectual property rights are intertwined and interconnected like a web and sometimes they do overlap. One of the most important aspects is that every organization needs

awareness on intellectual property rights. Furthermore, organizations should seek guidance on how they can optimize the exploitation protection and enforcement of intellectual property rights. In this regard, the value of an intellectual property policy should not be understated. If organizations are to integrate well in this knowledge economy, they need to take good care of their intellectual property rights.

For more information, contact us at [info@gobhozalegalpractice.co.bw](mailto:info@gobhozalegalpractice.co.bw).

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