ABC Attorneys®

INTELECTUAL PROPERTY AND TECHNOLOGY

NEWSLETTER

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AMANI IP NETWORK

MEMBER TAGLaw

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DAR ES SALAAM. DODOMA. ARUSHA. ZANZIBAR

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INTRODUCTION

Technology law is the body of law that governs the use of technology. It is an area of law that oversees both public and private use of technology. The practice of technology law can mean a lot of different things depending on whether the attorney works for the government or works in private industry. Technology law covers all of the ways that modern devices and methods of communication impact society.

We are proud to present the 2nd Edition of our ABC ATTORNEYS INTELLECTUAL PROPERTY & TECHNOLOGY NEWSLETTER. This newsletter aims to provide information and an update on usage of Copyrights, patents, trademarks, industrial designs, technology and other Intellectual Property rights. The Newsletter contains a variety of interesting subjects which cover online branding, data leverage and protection, and visualizes topics from Tanzania Mainland, Zanzibar, East Africa, and globally from a jurisprudential point of view

Intellectual property is at the core of every successful business. It protects inventions, ideas or software and is therefore one of a company's most essential immaterial assets. The developments in this field are manifold and complex. Staying up to date on the latest developments, changes in law and plans for reforms, especially on a global scale can be difficult. This new publication by ABC Attorneys gives you the opportunity to stay close to hot topics and recent developments in Tanzania and in various jurisdictions worldwide.

It is our aim to enlighten you with the latest happenings in the field of IPR and technology Law. It provides an overview of global developments and also addresses several contemporary issues with respect to IPR.

We would like to express our gratitude to all the contributors and editors, who have dedicated their time and effort towards the successful completion of this newsletter.

We hope you enjoy reading this edition and we look forward to receiving your feedback. Enjoy!

From
ABC Attorneys IP&TECH DEPARTMENT

LAW FIRM PROFILE

Law Firm Profile

ABC Attorneys is a corporate and Commercial Law firm based in Dar es Salaam Tanzania with offices in Dodoma, Arusha and Zanzibar. We are praised as one of the leading Intellectual Property and Technology law firms in Tanzania and Zanzibar.

We a member of TAGLAW, a global alliance of high quality law firms with 150 member firms based in over 90 countries with 9500+ lawyers in 300 offices and AMANI IP a network of Premier African Intellectual Property law firms.

ABC Attorneys is committed to driving innovation and delivering value to our clients. We work closely with you to provide the most sound and reliable solutions to your problem. Our firm leverages its skilled workforce and technology to provide premium legal services in Corporate, Commercial , Energy, Mining, Intellectual Property and TMT laws in Tanzania

AWARDS AND RECOGNITION

ABC Attorneys Recognized in the *2022 Edition of the WTR 1000*

ABC Attorneys is pleased to announce that the firm's Trademark practices in Dar es Salaam along with one attorney have all been ranked as recommended Law firm in Tanzania the 2022 edition of the WTR 1000.

The 2022 edition of the WTR 1000 features more than 80 country and US state-specific chapters analyzing local trademark legal services markets and profiling the firms and individuals singled out as leaders in their respective fields.

Individual practitioners, law firms and trademark attorney practices qualify for inclusion in the WTR 1000 solely on receiving sufficient positive feedback from market sources. The extensive research process was conducted over a four-month period by a team of full-time analysts and involved over 1,500 face-to-face and telephone interviews with trademark specialists across the globe.

According to the review, *"Since opening its doors in in 2012, commercial outfit ABC Attorneys has made intellectual property a central plank of its offering. Making full use of a proprietary web-based file management and communication program with broad application, it provides a timely and efficient service to clients with respect to trademark filings, portfolio management and litigation. As a member of the TAGLaw alliance, it supplies high-quality global support with the minimum of fuss; it is also engaged with AMANI IP, a network of IP and TMT firms dedicated to helping rights holders overcome IP and other challenges in Central and East Africa. "*

Our Managing Counsel Mr. Sunday Ndamugoba was also recognized as a recommended Attorney in Tanzania by this globally recognized trademark lawyers ranking authority.

"Sunday Godfrey Ndamugoba heads the IP department and is one of Tanzania's leading trademark and patent prosecution specialists; armed with contentious experience, too, he can smoothly solve any IP puzzle presented to him."

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GEOGRAPHICAL INDICATIONS IN TANZANIA

Is it time for their recognition and protection?

Introduction

Despite being a signatory to numerous multilateral agreements like the TRIPS agreement, which strongly emphasizes the protection of geographical indications as part of intellectual property law, it is undeniable that Tanzania, like many other African countries, lacks specific legislation or legal instruments governing the protection of geographic indications of origin. Tanzania lacks a plethora of benefits that are only available to the protected GIs as a result of the lack of protection for this category of IPR. There is an urgent need to enact special legal legislation that will cover the protection of geographic indications to the full extent and substance as opposed to the current regime where protection is so provided under Trade Mark law. This is because Tanzania has a variety of agricultural products and food staffs with unique and distinctive quality. This will protect food and agricultural products against counterfeits and unfair trade. The preservation of GIs will support local and native agriculture producers' economic growth.

Geographical indications (GIs), which are a type of intellectual property (IP), have attracted increasing attention from policymakers as well as exchange arbitrators, makers (mostly of farming products), legal counsels, and financial experts all over the world since the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) in 1994. A geographic indication is a place or country name that identifies a product whose reputation, quality, or other characteristics can be inferred. Customers are informed by a geographic indication that a product or good has outstanding attributes as a result of its place of origin. Accordingly, a geographical indication is more than a source or origin indication; it is a reference to a quality in place of a "produced in" mark that makes no mention of a particular quality.

Consumers' fundamental judgments and perceptions of the product are influenced by their product knowledge (awareness). Additionally, more knowledgeable buyers are better able to evaluate nearby options intellectually. Through specific national laws, geographical indications could be used for a wide range of products, whether agricultural, manufactured, or natural. Customers with greater amounts of geographic indications awareness can assess traceability names more precisely and end up being less positive and agreeable to non-marked products in this setting. The potentials associated with the origin and production location of agricultural goods, such as the soil and climate, are categorized as distinct local characteristics.

Does GIs Suffice ToBe One Of The IPRs?

Geographical indication, one of the intellectual properties, was subject to several objections from legal experts and other interested parties. This is due to the protection provided to intellectual property and intangible assets being a primary purpose of IP law. After GI was acknowledged by international legal mechanisms like the Paris Convention and Lisbon Agreement, the aforementioned uncertainty was dispelled. Foods and other agricultural products with a specific geographic origin are referred to by names with a geographic indication. Additionally, GI is defined as a label applied to goods with a particular geographic origin and qualities or a reputation owed to that origin.

The law governing protection of Geographical Indication in Tanzania

Geographical indications are not a brand-new notion in the legal system of Tanzania. The Trade and Service Marks Act of 1986 recognizes GIs. The trademarks office is given the authority to refuse registration of any mark that might lead consumers to get confused about the geographical indication. The protection of GIs in Tanzania is not addressed by any other IP legislation, such as the Fair Competition Act or the Merchandise Act.

Is the law governing GI in Tanzania adequate?

It is crucial to determine whether the current legal framework for GI protection is sufficient after taking into account Tanzania's legal protection of GI. It is obvious that the law governing GI is not comprehensive and effective given that many IPLs do not address it. Due to the numerous points of conflict between trademarks and geographical indications (GIs), Tanzanian trademark law cannot provide the adequate protection for GIs that it had unmistakably demonstrated to be incapable of providing. For a number of reasons,

ncluding the fact that GIs and trademarks represent different areas of differentiating marks and the efforts to protect them occasionally result in conflicts, it is not advised to protect GIs through TM legislation. Conflicts between protected GIs and trademarks for identical or comparable products that contain the same sign can occur. The decision of who should be permitted to use that sign as a trademark or GI is challenging yet crucial. It is also very important to determine whether the exclusivity of a registered trademark supersedes a later-protected GI. Conflicts can be resolved from either a trademark viewpoint or a GI perspective, and they will be handled differently depending on which perspective is employed. In essence, the choice is between giving the GI exclusive rights under a "first-in-time, first-in-right" scheme, giving the trademark exclusive rights without taking into consideration potential earlier trademarks, or requiring the coexistence of the trademark and the GI. Sometimes, makers of items with GI labels are prevented from using the GI associated with the goods by trademark law. GIs frequently include geographical references, such as names of regions or cities, and because these names are essentially descriptive in nature, they cannot be registered as trademarks.

Additionally, GIs are categorized as an industrial property kind that is distinct from trademarks. Unlike trademarks, geographic indications (GIs) cannot be freely transferred from one owner to another because the user must be appropriately associated with the geographic location and must abide by any regionally specific production processes that exist.

The same must be created in order for the GI to be protected in any jurisdiction. The manner in which GI projects may be developed in order to obtain legal protection is not covered by Tanzania's IP legislation. Despite numerous studies showing that Tanzania has a variety of goods that are eligible for recognition as GIs, such as “Kyela rice, or Tanzanite,” the same may not be adequately protected due to a lack of a legislative framework for ongoing protection. In response to that, the indigenous people are not benefiting from GIs.

The benefit of establishing GI projects is to make sure that local manufacturers of GI goods adhere to agreed-upon criteria in order to compete in the market. Costs related to establishing the GIs are just one of several factors that may make it difficult to build the GI. This is owing to the undeniable truth that GI protection has large inherent costs, much like the majority and possibly all IPRs. It is essential to carefully examine the expenses as part of an informed discussion on GIs. Research demonstrates that the advantages of GI protection must be weighed against these drawbacks, particularly the impact of GI protection on public interest problems like freedom of speech in both commercial and non-commercial contexts. A GI can take time and money to develop, register, and enforce through legal action or other administrative action. Each product’s true cost will vary depending on a number of variables, such as the market’s structure, consumer knowledge and views, the degree of misuse, etc. The likelihood that African producers, especially small groups, will find this to be a feasible option decreases as these costs rise. Each product's true cost will vary depending on a number of variables, such as the market's structure, consumer knowledge and views, the degree of misuse, etc. The likelihood that African producers, especially small groups, will find this to be a feasible option decreases as these costs rise.

Conclusion

As opposed to the current protection provided by the Trade Marks Act, which has categorically shown to offer no effective legal protection to GIs, Tanzania should adopt the TRIPS Agreement framework for protecting GIs through the Sui Generis system. The existing trademark law primarily addresses trademarks, not geographical indications. Alternative: In order to provide the GIs with an effective level of protection, the Tanzanian government may broaden the protection provided by the trademark legislation. Since there is no need to go through the complete legislative process, it is very easy to start the process of adding some changes and appendices to the current trademark legislation. As a result, everything else will continue to operate as before, including administration and dispute resolution procedures.

PROTECTION OF TITLES UNDER COPYRIGHT AND TRADEMARK LAWS IN TANZANIA

Introduction

The purpose of a title is to draw the reader's attention and highlight the importance of the underlying material. To put it another way, titles of books, video games, movies, and other literary and artistic creations are crucial. Therefore, the owner of the rights to a work has a natural interest in being able to safeguard the title of the work such that it is only connected to that work and not to any other works. Titles or portions of titles, on the other hand, may also have a separate commercial worth. They may be utilized and registered as trademarks, which may subsequently be used in settings aside than those directly related to the original work, including but not limited to, merchandise

.Copyright protection of titles

Tanzania joined the Berne Convention as a signatory. The Berne Convention was created in order to protect "the authors' rights to their literary and artistic creations. The term literary and artistic works is defined in Article 2(1) as any output in the literary, scientific, and artistic realm, whatever may be the style or form of its expression, despite the fact that the convention does not provide a more specific definition of what constitutes a work. The provision includes a non-exhaustive list of possible types of such works, including books, writings, and other similar works, musical compositions, and filmic works.

A title, which is defined as the name of a book, movie, video game, television or streaming series, or another literary or artistic work, may also be a protected work on its own given the broad definition of the term. At the Brussels Conference in 1948, it was suggested that Article 15 be added to the Berne Convention, but it was not approved. It states that "no title of a literary or artistic work may be utilised by third parties to designate another work in any country of the Union where the first mentioned work has become so well-known under that title that the use of the title for the other work would give rise to confusion between the two works. Despite this, some convention parties have put into place particular safeguards for the protection of titles with language that is comparable to the plan.

The convention makes no clear mention of the specific conditions that a work must satisfy in order to be granted copyright protection. According to the agreement, a work must be an intellectual invention (Article 2(5)), which suggests that it must be created by a human and possess some degree of uniqueness or personality.
There is no question that a title would be protected if the 11 words that were copied made up the title or a portion of the title of a copyrighted work (such as the title of an article in a newspaper or magazine), provided that the originality criterion was met because titles are components of otherwise copyrighted works. In our perspective, headlines can be literary pieces on their own or as a component of the articles they refer to.

Therefore, if a title satisfies the originality criterion, it benefits from copyright protection. However, it might be challenging to evaluate particular situations, and in reality, there is a lot of uncertainty around the releasing of titles for new movies, streaming series, and video games, among other things.

By their very nature, titles are frequently brief texts that are also descriptive. If a title has multiple terms but they are all widely used.

Titles and trademarks

Titles of copyrighted works frequently go from serving as 'simply' titles of works to serving as indications of their economic provenance (i.e., a trademark). Titles must be registered as trademarks in accordance with the general rules of trademark law. The Trade and Service Marks Act of 1999 states that there are no explicit guidelines for the protection of titles as trademarks.

A trademark must have unique character in order to be protected under Section 16 of the Trade and Service Marks Act of 1999, which states that the sign must be able to distinguish the goods or services of one business from those of other undertakings. A title must be both distinctive and non-descriptive according to the distinctiveness criteria. Many names are just descriptions of the content of the work (such as "Birds of Africa"), and as a result, they cannot be protected as word marks for goods and services associated to publication and other kinds of exploitation of the work (ie, certain goods and services in Classes 9, 16 and 41).

If the figurative element is distinctive, a graphic design of a self-descriptive term may be registered as a figurative mark. The logo will be protected, making it possible for the owner to use it as a trademark or to license it to others. If the title is already distinctive, both a word mark and a logo can be registered for it. The emblem is frequently used in conjunction with merchandise.

Unquestionably, a trademark that consists of just one or two phrases can be distinctive. This means that it is feasible to register both short titles and sections of titles that are used, such as character names in titles (and in the works themselves). This potential in particular is crucial because it is unclear whether characters' names that appear in works protected by copyright are legally protected. These names are frequently registered as figurative marks as well.

In most cases, titles and names of characters are registered in:

- Class 9, which encompasses recorded films, music recordings and computer games;
- Class 16, which encompasses books and comics;
- Class 28, which includes all kinds of toys; and
- Class 41, which encompasses entertainment services, including film production and online games;
- Class 25, which encompasses clothing;
- Class 3, which covers perfumes; and
- Class 14, which includes jewellery and watches, are often added.
- A thing to note is that, the issue of the protection of titles as trademarks is not a settled matter.

DATA AS THE FUEL TRANSFORMING THE ECONOMY OF TANZANIA

Introduction

Data has the ability to inspire new goods and services, advance society, and address health and environmental issues, but what does it take to strike a balance between monetizing data and safeguarding IP and other rights?

What did you eat this morning for breakfast? What height are you? How much pressure is in your car's tires? When did you last make an online purchase? What is the genetic signature of you? Every element of our life involves data, and in the recent years, our capacity for storing and processing data has grown significantly. This brings up challenging issues including how to value data, how to extract that value, how to distribute it safely, and what rights need to be acknowledged and safeguarded.

With instances of how data is utilized in research and industry, discussions on the protection and regulation of data, its use in artificial intelligence, and how to strike a balance between access and control have grown. These include everything from utilizing AI to create music to observing bee behavior in beehives.

The COVID-19 epidemic has hastened digitalization; by 2023, 43 billion devices are predicted to be connected to the Internet of Things, and more than 1 million new 5G users are added daily. Given that 60% of the world's population is now online, data is the fuel for the future economy if digitalization is its engine: Frontier technologies are on the rise as a result of growing connectivity and the data stream that results from it. It is vital that we comprehend the nature of data and its significance in our linked world.

The value of data

Data can revolutionize every part of business and society now that smart gadgets and sensors are so widely used. The value of data is greatly influenced by the insights it is used to generate, as well as, to a lesser extent, by the scale at which those insights are implemented.

Data can be used to increase cost effectiveness and streamline processes. A few examples are all the sectors that rely on satellite data and the developing field of precision medicine. It can also be utilized to enable new enterprises based on developing customized products and it can generate totally new sectors and businesses that would otherwise be unimaginable.

Monetary and social value

Building walls may hinder this value from being achieved because innovative goods sometimes require the fusion of data from several sources. Data sharing is essential, but there are additional justifications for making some data publicly accessible. Data has both monetary and social worth, the latter of which is difficult to quantify and might not draw commercial investment. Because of this,

governments have long offered data, such as national statistics, as a service to the general people. Better results will be possible with the help of policy actions. There may be social benefit that private businesses and people are unable to realize.

For instance, the provision of governmental services in some African nations depends on the availability of data, whereas crucial data is held in vast quantities by groups like religious institutions and humanitarian organizations. Colonial institutions still exist in several nations, which has negative effects, such as a lack of information on women.

Our growing digital footprint has made it possible to gather enormous volumes of data, which is known as "big data." This ability is fuelled by cheaper storage options and device connectivity, and it is expected to grow faster. The amount of data produced every day is 2,500 times more than what is kept in the British Library, and 90% of all data in the globe has been created in the last two years. However, the size of this data poses its own problems, including how to identify the pertinent data, foster interoperability, guarantee justice and inclusion, and lessen sharing inefficiencies. Our growing digital footprint has made it possible to gather enormous volumes of data, which is known as "big data." This ability is fueled by cheaper storage options and device connectivity, and it is expected to grow faster.

Medical information may be extremely effective in identifying or predicting disease, but only when paired with other pieces of knowledge. Some data, such as traffic or weather data, might degrade relatively fast, while other data can keep value even after use.

A detailed knowledge of data that takes into consideration the various contexts necessitates the development of organized data that can be transferred without losing its value and interoperability-promoting methods. Medical information may be extremely effective in identifying or predicting disease, but only when paired with other pieces of knowledge. Some data, such as traffic or weather data, might degrade relatively fast, while other data can keep value even after use.

The regulatory matrix

Tanzania does not yet have a primary law governing data protection. The Personal Data Protection Bill of 2022, which will cover both electronic and non-electronic personal data types, will be Tanzania's first comprehensive set of laws governing the protection of personal data. The Bill was published on August 31, 2022, in Special Gazette of the United Republic of Tanzania No. 34, Vol. 103. The new law goes one step further by adding criminal penalties for specific violations of personal data. In this way, the government is sending a strong message to both individuals and corporations that personal data protection is now being taken seriously in Tanzania. The bill was crafted in response to online services selling citizens' personal data without their consent. This bill proposes the enactment of the Personal Data Protection Act of Tanzania, 2022 with the aim of Setting the basic conditions for the protection of personal data in order to keep the collection and processing requirements to a minimum of personal data; Establishing the Commission for the Protection of Personal Data; Promote the protection of personal data processed by Government agencies and private agencies as well as other related issues.

Data regulation will be a clear thing with the anticipated implementation of this piece of legislation.

Where do IP rights fit in?

Most data does not cleanly fit into Tanzania's current legislative frameworks, such as its current intellectual property (IP) systems. IP rights safeguard mental works, yet the majority of data is not creative. While copyright protection may be able to cover some types of data, it often only applies when there is structure and originality. Patents can protect methods for using data or how it is generated, but not the data itself. Trade secrets and contract law are the alternatives to restricted IP rights.

Data protection is made flexible by trade secrets. It is necessary to develop integrated systems and models between the owner of the data and those who are interested in licensing.

The IP system has complicated problems with data. Due to the limited text and data mining provisions, IP can both be an incentive for the investment in data development (for example, through database rights) and a barrier to access to data.

INSIGHTS: TANZANIA

The Personal Data Protection Bill of 2022

The Personal Data Protection Bill of 2022 will be Tanzania's first comprehensive set of rules relating to personal data protection, covering both electronic and non-electronic personal data forms. The Bill was published in the Special Gazette of the United Republic of Tanzania No.34. Vol. 103 dated 31st August 2022.

The bill was crafted in response to online services selling citizens' personal data without their consent. The new law goes further by introducing criminal sanctions for certain personal data breaches. In this way, the government is sending a strong message to both individuals and corporations that personal data protection is now being taken seriously in Tanzania.

This bill proposes the enactment of the Personal Data Protection Act of Tanzania, 2022 with the aim of:

1. Setting the basic conditions for the protection of personal data in order to keep the collection and processing requirements to a minimum of personal data,
2. Establishing the Commission for the Protection of Personal Data;
3. Promote the protection of personal data processed by Government agencies and private agencies as well as other related issues.
4. We set out below our initial observations on the key issues we have identified in the Personal Data Protection Law of Tanzania.

Key Points

- The proposed Act shall apply to Mainland Tanzania and Tanzania Zanzibar.
- There shall be established a Commission for the Protection of Personal Data.
- There are procedures for the collection, use, and storage of personal data.
- A Requirement to Appoint Personal Data Protection Officer
- Data Collectors shall be registered and a license to be valid for a period of 5 years
- Deals with the provisions for dealing with complaints relating to the violation of legal obligations.
- The Commission is proposed to be given also the authority to issue administrative fines when it is satisfied with depending on the level of violation committed
- Victims of the violation to be compensated in damages
- A person who reveals data of a person shall be fined TZS 100,000 /= (50 USD) to a maximum of TZS 20,000,000/= (5,000 USD) or 10 years of imprisonment or both if a company shall be fined between TZS 1,000,000 91,000 USD) and TZS 5,000,000,000 (2.5 M USD)
- Fine for violations to be imposed minimum is TZS 100,000 /= (50 USD) to a maximum of TZS 10,000,000/= (5,000 USD) or 5 years of imprisonment or both
- Compounding offenses – Fine for violations to be imposed minimum is TZS 100,000 /= (50 USD) to a maximum of TZS 5,000,000/= (2,500 USD) or 5 years of imprisonment or both.
- If a violation is by a company, then all responsible officers involved shall be accountable.

INSIGHTS: GLOBAL

NFTs, IP rights, and the metaverse: Should they be regulated?

Introduction

Nothing originates from nothing, said the Greek philosopher Parmenides in the late sixth century BC. Every two or three years today, seemingly unheard-of phenomena that appear to have the potential to alter both the world and the law appear to be occurring in the digital era. It was Web 2.0 a few years ago, followed by Cloud Computing, Blockchain, and Web 3.0. Numerous publications over the past year have predicted how the metaverse and NFTs (non-fungible tokens) will revolutionize the world, generating attention in the issue of whether new legislation are urgently needed to keep pace with these breakthroughs. Or, to put it another way, should the metaverse adapt to the law or the other way around? The latter is the best reaction at this time for the reasons listed below.

We have benefited from an information, data, and telecommunications-based online network since the Internet's inception more than two decades ago. A variety of independent virtual worlds have also emerged, mostly on social media and in video games like Second Life, Instagram, Fortnite, TikTok, and Roblox. The electromyography (EMG) movements and brain interfaces of the metaverse promise to govern interconnected virtual environments. Companies will have the unheard-of power to fully utilize the possibilities of the data they gather in the metaverse.

The development of the metaverse, a network of 3D virtual worlds where people may engage with one another socially and commercially mostly through avatars, is something that the technology sector and the video game industry are preparing for. The metaverse does not yet exist and is still a long way from becoming a reality, at least not in the way that certain journalists are currently describing it. This is mainly because for it to succeed, there are strict computational requirements and established procedures.

NFTs, on the other hand, are already a reality.

NFTs are cryptographic data units with distinctive metadata that are based on current blockchain technology. As a result, NFTs can be recognized from one another and can store other types of information, such as various people's names or artistic creations. Due to their individuality, they can be bought, sold, or traded, with all transactions being recorded in a digital ledger. For the benefit of the entertainment sector, NFTs use the capabilities of blockchain technology to produce non-fungible digital files containing embedded images, graphics, or videos that set the token's market value.

Numerous voices are now calling for new rules for the metaverse, as was already mentioned. Why? To narrow a perceived gap between reality and the law and to protect users when they interact in this virtual world.

The development of the metaverse, a network of 3D virtual worlds where people may engage with one another socially and commercially mostly through avatars, is something that the technology sector and the video game industry are preparing for.

It's common to hear claims that the current laws do not apply in the metaverse, that they are not appropriate for that setting, or that technology advances faster than the law. However, in my opinion, these claims are almost always false.

Countries with significant Internet presences have adopted new regulations during the past 30 years to address e-commerce, technologically related crimes, consumer rights for digital material, and the liability framework for Internet service providers, to mention a few.

Consider the laws governing intellectual property (IP). By granting them exclusive rights over their copyright, trademarks, patents, industrial designs, or trade secrets, they safeguard individuals like authors, inventors, producers, designers, and performers. The protection of intellectual property rights is largely concerned with their intangible properties rather than the tangible items that contain creative works, distinguishing signs, or technological innovations.

IP rules regulate the ownership of the intangible components of such property, whereas civil law regulates ownership of tangible property (such as a car, book, or purse, all of which may contain trademarks, patents, or works of authorship). This is the distinction between the corpus mysticum, an intangible asset, and the corpus mechanicum, a physical manifestation of an intangible asset, according to IP terminology. This idea has been used for ages, and it also holds true for NFTs and the metaverse.

Companies will have the unheard-of power to fully utilize the possibilities of the data they gather in the metaverse.

The metaverse is a virtual world where avatars controlled by people or computers can operate virtual objects like furniture, guns, and automobiles, all of which may bear trademarks or other works protected by copyright. The logical conclusion is that the creators of the metaverse will need to respect the rights of creators, designers, and owners of distinguishing marks as in the actual world because IP rules deal with the intangible components (corpus mysticum) of an object, whether physical or virtual. As a result, a particular right holder will have the right to pursue the exploitation of his or her IP rights in the metaverse, for instance, when tied to a digital avatar's virtual pocketbook or jacket.

The conclusion is similar for NFTs. NFTs are digital files that allow for the embedding of creative works or other content, such as videos or artwork. Anyone who uses, for example, a sound recording or a clip from a video game in an NFT will need prior authorization from the copyright holder of such work as long as copyrigh as copyright provides an exclusive right over original works of authorship (corpus mysticum), and this is distinct from the ownership of any digital object in which the works are embedded. As a result, there is minimal disagreement over how well the current regulations apply to NFTs and the metaverse.

From a legal standpoint, the Berne Convention for the Protection of Literary and Artistic Works, now ratified by 181 countries, establishes that contracting parties must grant exclusive rights to authors over their works irrespective of the type or form of their expression. The Berne Convention has since been supplemented by other international agreements, including the WIPO Copyright Treaty, adopted in 1996, which adapts the Berne Convention to the digital environment. The storage of a protected work in digital form on an electronic medium (such as an NFT or a file, the content of which is displayed in the metaverse) constitutes a reproduction, which requires the prior consent of the copyright holder, according to this agreement (Agreed Statement concerning Article 1(4) of the WIPO Copyright Treaty). It would appear that the law is not always applied slowly.

New challenges for IP rights owners

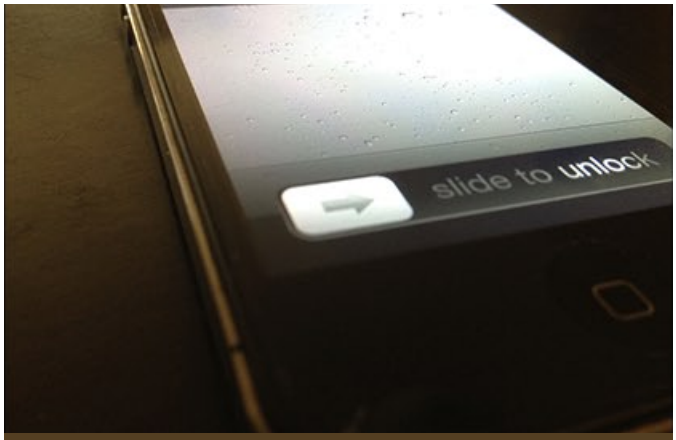
In spite of the fact that these new entertainment formats provide a lot of difficulties for IP rights holders, these difficulties come from different directions. Exclusive ownership rights over their intangible property are held by authors, producers, publishers, and trademark owners. However, the Berne Convention anticipates several circumstances in which they may not be exercised, thus these rights are not unqualified. Some uses fall outside the purview of right holders' exclusivity, such as the replication of a literary work for a book citation or the use of a trademark to represent the goods or services of the brand owner.

Therefore, in theory, we must obtain permission from the mark's owner before using any company's trademark in a digital object like an NFT or a thing from the metaverse. Despite the fact that various courts have determined, for instance, that certain descriptive uses of third parties' trademarks don't require their prior consent in circumstances involving video games.

However, the obvious conclusion is that there are many examples to draw from when discussing whether or not specific uses of IP rights are required in NFTs or the metaverse. Nothing new is created from scratch, as has been said, and historically, the application of the idea of learning from past experiences has been the foundation for the creation of new regulations. Another conclusion is that, at least legally speaking, the metaverse and NFTs are not as disruptive as some may think since virtual worlds and digital items have already been around for two decades.

It is a certain that NFTs and the metaverse, when they exist, would provide numerous difficulties for IP rights holders. Most of these difficulties are now unpredictable. As a result, we must evaluate NFTs, the emerging metaverse, and any other new digital phenomena in light of the laws that have already been put in place following extensive discussion among numerous nations and civilizations. These laws have also been put to the test in a variety of situations and have held up for decades. Undoubtedly, some changes will be required in the coming years to control how people interact in digitally connected worlds, but these must be made once we understand what the issues are. In the meantime, IP rights will continue to be as valid as ever for the advancement of science and the arts.

QUICK FUN FACTS

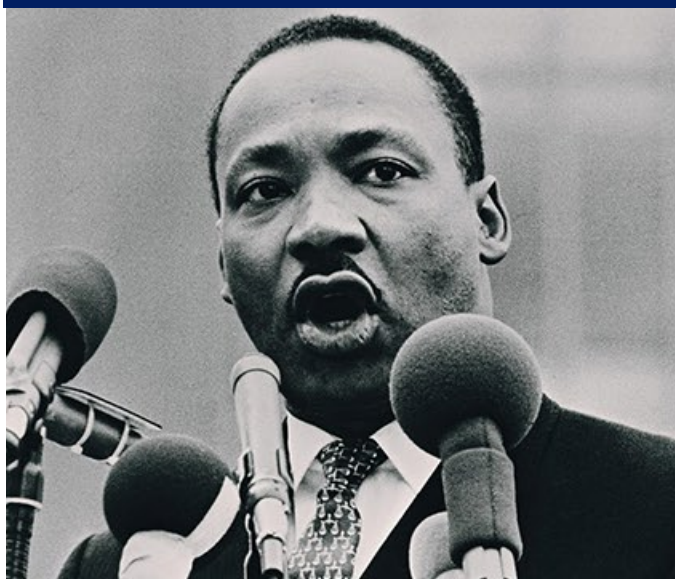


Did you know?

The slide-to-unlock gesture you used to unlock previous versions of the iPhone was more than just a cool feature—it's also a patent owned by Apple. The company even sued Samsung for $119.6 million for using the similar function and, after a long battle in court, Apple won the case. It's a bit silly, really, but blame it on the patent system. Be that as it may, nobody now gets to use the popular 'Slide to Unlock' without infringing on Apple's patent unless a court rules it is invalid or prior art.

Did you know?

Martin Luther King's 'I Have a Dream' Speech Can't Be Used without His Family's Approval.



With his altruistic goal, one would think that Dr. Martin Luther King would have welcomed the most widespread and unfettered dissemination of his speeches as possible. As it stands, however, the writings, documents and recordings of Martin Luther King, Jr., including his "I Have a Dream" speech, are protected as his estate's intellectual property. Inasmuch as Dr. King's delivery of the "I Have a Dream" speech was filmed and recorded, it became fixed in a tangible medium of expression; it was then registered with the copyright office in US. Whereas a copyright protects such original works of authorship, with limited exceptions Dr. King's speeches cannot be used without prior approval by his estate for a term of life plus 70 years. The exception to the need for prior authorization is the use of excerpts of speeches—where in a manner that comports with the so-called Fair Use doctrine, i.e., in the form of a brief quotations in articles and reviews—where there is no attendant profit or other commerce. But even then, the legal confines of the right are uncertain, and the King estate has been highly proactive in restricting such usage, including engaging in litigation to eliminate uses of Dr. King's work absent the payment of license fees. The estate also treats Dr. King's name as a brand, for commercial exploitation solely by his family. For their part, courts have ruled that recordings of King's oration, whether audio or visual, belong to the King family and its publisher, EMI Music Publishing, which has licensed his speeches, together with Dr. King's image for use in various projects, including a 2001 Alcatel commercial, and a 2018 Super Bowl commercial for pickup trucks.

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