

THE COMMERCIALIZATION OF INTELLECTUAL PROPERTY RIGHTS IN KENYA

In today's fast-paced world, intellectual property rights (IPRs) are one of the most valuable assets a business can possess. However, merely owning IPRs—such as patents, trademarks, utility models or copyrights—is not enough. The real value lies in effectively commercializing these assets to generate revenue, foster partnerships and drive business growth. This article offers an exploration of intellectual property commercialization, mechanisms and the legal infrastructure that supports the effective monetization of IPRs in Kenya.

1. UNDERSTANDING INTELLECTUAL PROPERTY AND ITS LEGAL FRAMEWORK IN KENYA

1.1 Statutory framework

IPRs refer to the legal entitlements that protect creations of the mind, including inventions, literary and artistic works, designs and symbols. Kenya's robust statutory framework includes several key laws: The Industrial Property Act, Cap 509 which governs patents, utility models and industrial designs; the Copyright Act, Cap 130 which protects creative works, the Trademarks Act, Cap 506 which regulates trademarks and the Seeds and Plant Varieties Act, Cap 326 which safeguards plant breeders' rights. Additionally, the Anti-Counterfeit Act (2008) combats counterfeiting through the Anti-Counterfeit Authority (ACA), creating a comprehensive legal structure that protects creators and facilitates commercialization.

1.2. Institutional framework

Kenya's institutional framework for intellectual property administration and enforcement is equally well-developed. The Kenya Industrial Property Institute (KIPI) serves as the central hub for trademark, patent, utility model and industrial design registration, while the Kenya Copyright Board (KECOBO) manages copyrights and oversees collective management organizations. The Anti-Counterfeit Authority (ACA) conducts market surveillance and seizures of counterfeit goods and the Kenya Plant Health Inspectorate Service (KEPHIS) implements plant variety protections. Together, these institutions provide creators with the necessary tools to register, protect and monetize their intellectual assets, forming an integrated system that supports innovation and economic growth through effective intellectual property management. It is important to note that Kenya is moving towards a unified intellectual property landscape by proposing to merge KIPI, KECOBO and ACA into a single entity.

2. MECHANISMS AND STRATEGIES FOR INTELLECTUAL PROPERTY COMMERCIALIZATION

Intellectual property commercialization refers to the process of transforming IPRs into commercially viable products and services. The following are the primary commercialization strategies employed:

2.1 Licensing

Intellectual property licensing is where the intellectual property owner (licensor) grants a third party (licensee) the right to use the intellectual property under specified conditions, usually in exchange for royalties, lump-sum payments or equity.

Licensing is not just for multinational corporations. Small businesses, artists and even individual inventors can benefit. Take the case of a Kenyan musician who licenses their song for use in commercials, films or ringtones. Every time that song plays, they earn money. You can also consider a tech startup that patents a new mobile payment solution but does not have the capacity to scale it. Instead of letting the idea gather dust, they license it to a bigger company, earning royalties on every transaction.

Licensing is especially prevalent in Kenya's hospitality, fast food and retail sectors. Licensing generates a revenue stream while allowing rights holders to retain ownership. A 2023 article in the WIPO Magazine notes that intellectual property protection and licensing can accelerate Small and Medium Enterprises (SME) growth by helping them build value from their intangible assets and explore innovation-driven business models. The article can be accessed *here*. Similarly, WIPO observed that SMEs that own and leverage intellectual property rights tend to experience higher growth and profitability compared to those that do not. This affirms that licensing is not merely an administrative formality but a strategic tool for commercialization.

2.2 Assignment

Assignment is the permanent transfer of an IPR from one party (the assignor) to another (the assignee). Unlike licensing, the original owner relinquishes all rights, title and interest in the intellectual property. Once assigned, the new owner can use, commercialize, license or even sell the IPR without seeking the assignor's permission.

Assignments are useful tools for commercialization, when the intellectual property owner does not have enough capabilities (financial, human resource, marketing, etc.) to market the developed intellectual asset and/or when the owner would like to realize an immediate cash flow from an intellectual property asset, which it does not plan to exploit with its own resources.

2.3 Franchising

Franchising combines business models with intellectual property rights. The franchisor allows the franchisee to operate under its brand, utilizing trademarks and trade secrets. This is a highly effective commercialization strategy in Kenya, with several global and local brands expanding through franchises. Under franchising, the franchisor provides the franchisee with the right to use its brand, trademarks, and business methods for a fee or royalty. Franchising has seen significant success with brands like Java House, Mambo Italia and KFC in Kenya.

2.4 Securitization and Collateralization

Through the Movable Property Security Rights Act(MPSR), Cap 499A, IPRs can be used as collateral for loans. This form of intellectual property commercialization allows intellectual property holders to access financing using intangible assets. Though underutilized, this method is gaining traction as awareness grows.

The MPSR offers a progressive opportunity for Kenyan businesses and individuals to secure financing by using intellectual property as collateral. This form of IP securitization represents a unique market that is still in its early stages of development. A notable example of intellectual property securitization is Walt Disney, which raised about USD 725 million from Industrial Bank of Japan in 1988 through issuance of the bonds against future earnings of an amusement park for the coming 20 years. This case study can be accessed *here*. This case study highlights the potential of using intellectual property for financial leveraging, a practice that could benefit businesses in Kenya as the market matures.

2.5 Joint Ventures

Joint ventures are business alliances of two or more independent organizations (venturers) to undertake a specific project or achieve a certain goal by sharing risks. Intellectual property has an important role in the creation of such collaborations, since venturers bring their own intellectual assets for the success of a joint venture and they should agree on their initial contributions, responsibilities and obligations within the alliance as set out in joint venture agreements.

A notable example is when Safaricom, a leading mobile service provider in Kenya, formed a joint venture with Vodacom, a South African mobile

giant, to co-own M-Pesa, a mobile banking platform. Both parties contributed intellectual property, including telecommunications infrastructure and financial services technology. The joint venture enabled the expansion of M-Pesa across multiple countries in Africa. A snippet of the case study can be accessed *here*.

3. VALUATION AND MARKETABILITY OF IINTELLECTUAL PROPERTY ASSETS

A significant challenge in Kenya's IPR Law landscape is the valuation of intangible assets. Currently, the Law does not provide a stand-alone mechanism to value intellectual property. However, WIPO has provided methodologies that can be adopted in Kenya's intellectual valuation practice. These methodologies are broadly categorized into; Qualitative approaches and Quantitative approaches. Qualitative methods focus on market positioning, legal protection and the strategic importance of the intellectual property, while quantitative methods involve income, market and cost-based approaches to assign numerical values to intellectual property assets. However, the absence of a mature intellectual property market in Kenya means that some of these methods, particularly the market approach, face limitations.

Despite these challenges, there has been a growing investment in intellectual property education and training, as well as strengthening institutional capacity through partnerships with international organizations like WIPO. Efforts are also being made to foster public-private collaborations and develop innovative financing models, such as using intellectual as collateral. With these initiatives, Kenya is gradually improving its intellectual property infrastructure, enabling better intellectual property commercialization and providing businesses with the tools to accurately assess and leverage their intellectual property for growth and economic development.

CONCLUSION

The commercialization of IPRs in Kenya presents significant opportunities. With a well-established legal and institutional framework, Kenya is positioned to enhance the value of its intellectual assets, fostering innovation and economic growth. The various commercialization strategies mentioned above offer businesses diverse avenues to monetize their IPRs.

HOW WE CAN HELP

At **CM Advocates LLP**, we have a dynamic team of Intellectual Property Lawyers dedicated to helping secure all forms of Intellectual Property including trademarks, patents, copyrights, industrial designs and utility models. Our services also extend to the recordation of intellectual property rights with the Anti-Counterfeit Authority as well as monitoring and enforcement of intellectual property rights. If you would like to consult on this article or any other related matter, you may contact the contributor on the email below or the commercial team through ***commercial@cmadvocates.com***.



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