

Review: On Intellectual Property Cooperation and the Public Interest in Africa

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Caroline B. Ncube, Intellectual Property Policy, Law and Administration in Africa: Exploring Continental and Sub-Regional Co-Operation. London: Routledge, Taylor and Francis Group, 2015, 188 pages, £97 (hardcover), ISBN: 978-1-138-82073-9.

Some works succeed in providing a wealth of information and covering a broad range of issues in a concise manner, to the comfort of the reader. Professor Ncube's book, *Intellectual Property Policy, Law and Administration in Africa: Exploring Continental and Sub-Regional Co-Operation*, does just that. Ncube evaluates the extent to which African states' and institutions' approaches to intellectual property (IP) align with the public interest need to balance the needs of rights-holders with those of users. She also lays out the challenges posed by the harmonisation agenda of the newly-formed Pan-African Intellectual Property Organisation (PAIPO).

In respect of pursuit of the public interest via IP policymaking, law-making and administration, Ncube finds the continent's record is decidedly mixed. In considering the viability of the African Union's (AU's) drive for a harmonised African continental IP framework via PAIPO, the author examines and analyses the IP policy, legal, and administrative modalities of the continent's regional economic communities (RECs) and of its regional IP institutions, the African Regional Intellectual Property Organisation (ARIPO) and the Organisation Africaine de la Propriété Intellectuelle (OAPI). Ncube concludes that PAIPO's harmonisation mandate is going to be difficult to fully achieve, particularly because of the already-existing (and very

different in their approaches) ARIPO and OAPI regimes. ARIPO crafts IP legal instruments that its Member States can then domesticate in line with their particular development and public interest needs. In contrast, OAPI's legal instruments are binding on all its Member States. Due to these and other complexities, Ncube recommends that PAIPO should initially pursue a relatively loose IP *cooperation* model, and only later begin to pursue full, tighter *harmonisation*.

The book begins by tracing the history of existing IP laws in Africa and reminds the reader of the continent's diverse legal, socio-economic, cultural and political landscapes, and the resulting need "for flexible and nuanced IP systems" (p. 10). Ncube's international starting point is IP law as anchored in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which, through various flexibilities, seeks to balance the interests of rights-holders and users. Ncube conducts an overview of public interest use of TRIPS flexibilities in Africa at both national and regional levels, and finds that "meaningful progress is being made" in this respect (p. 31). Examples of public interest TRIPS flexibilities being used on the continent that Ncube points to are: transition periods, tailored definitions of invention, other patent-related flexibilities (e.g., for parallel importation, compulsory licensing), and government use provisions.

The author also highlights the public-interest-oriented contributions of the African Group of official country representatives at the World Intellectual Property Organisation (WIPO) in Geneva. The African Group played a key role in articulating, formulating and adopting the WIPO Development Agenda of 2007, which is considered a symbol of inclusion of public interest concerns in IP governance.

Nevertheless, Ncube finds that lack of national governmental capacity negatively affects levels of state technical IP expertise, efficiency of government institutions dealing with IP matters, and autonomy of IP offices responsible for TRIPS implementation. And most of the technical assistance provided to national governments comes from WIPO which, as Ncube points out, is "IP-centric", i.e., puts emphasis on a rights-holder needs. This rights-holder-oriented agenda often gets translated into national solutions without the necessary domestic calibration. Ncube suggests building the capacity of national IP offices and government departments so that they are more appreciative of the developmental and public interest relevance of IP.

Ncube also evaluates the extent to which REC IP policies serve the public interest, finding that significant IP policymaking progress has been made by the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA) and the Economic Community of West African States (ECOWAS).

In respect of the regional institutions where IP is the sole focus, namely ARIPO and OAPI, Ncube concludes that, save for ARIPO's work with the Swakopmund

Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, these institutions have not done as much as they could to advance their Member States' public interest needs. Ncube cites OAPI's early adoption of TRIPS standards, and the adoption by both OAPI and ARIPO of the International Union for the Protection of New Varieties of Plants (UPOV) model for strong plant variety protection (PVP) standards, as clear examples of failure to cater to the public interest.

On the matter of PAIPO, the author provides a historical outline of the events up to the time of writing in March 2015. After outlining possible arguments for and against the creation of PAIPO, Ncube concludes that "since the AU has committed to the establishment of PAIPO, the real challenge is the efficient operationalization of the organization" (p. 140). Ncube concludes that PAIPO should focus on building continental IP cooperation for the next 10 years, modelled on Asia's ASEAN bloc, and only later seek to adopt full harmonisation, potentially modelled on the European Union (EU) approach or the Latin American MERCOSUR approach. The author also stresses the importance, during the initial cooperation phase, of PAIPO interacting with ARIPO and OAPI in a way that respects their distinct mandates and maximises efficiency. This cooperation, though with the two IP institutions that the author has demonstrated have not done much to promote the public interest, is key to the successful functioning of PAIPO.

The author articulates, in a clear manner, the complex policy, legal and administrative considerations, and challenges, currently at play in the African IP landscape. The book is strongly recommended to students and scholars interested in an introduction to, or in learning more about, the subject, and to policymakers seeking public interest approaches to IP.