

Companies and Intellectual Property Commission (CIPC)

(Agency of the Department of Trade and Industry)



Companies and Intellectual
Property Commission

a member of **the dti** group

Intellectual Property Laws Amendment Act (IPLAA) : Act 28 of 2013

Brief to CIPC Webinar Sessions

16 March 2016 CIPC



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Purpose of the Workshop:

The purpose of this presentation is to introduce, educate and create awareness of Intellectual Property Laws Amendment Act, 2013 (IPLAA) to CIPC Webinar Session and more particularly the following:

- Three requirements for use of indigenous knowledge by third parties
- Institutions established by the IPLAA
- The National Database

Agenda Points:

1. CIPC Mandate
2. SA Policy Position/Approach – IP System vs Sui Generis
3. WIPO - Introduced
4. WIPO Discussions – Indigenous Knowledge
5. Indigenous Knowledge defined (WIPO)
6. Indigenous Knowledge defined - IPLAA
7. IPLAA - Law
8. Benefits of the IKS
9. Challenges

CIPC mandate:

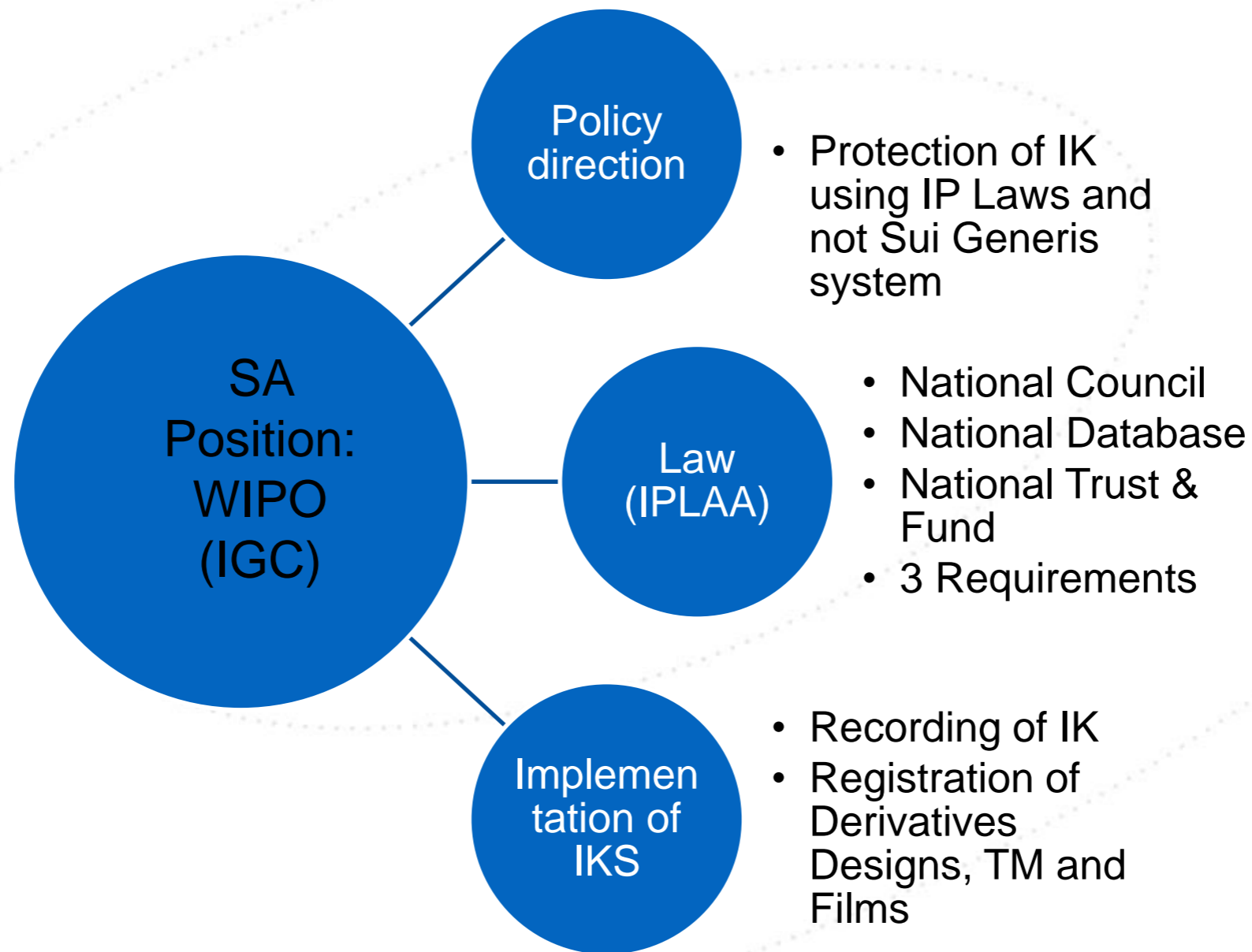
Registration of companies (entities) in terms of Companies Act, 2008

Registration of Intellectual Property rights:

- Cinematograph Films
- Patents
- Trademarks
- Designs

Intellectual Property Laws Amendment Act No: 28 of 2013 (IPLAA)

SA Policy Position / Approach



SA Policy Position – cont'd

South Africa crystalized its position on indigenous knowledge in the Intellectual Property Laws Amendment Act, 2013 which has the effect of amending three primary IP statutes referred above.

The Act contains the provisions intending to harvest benefits for indigenous communities and proper implementation of the Act should be able to realize such benefits.

This position is on record at WIPO IGC and we are proud to be amongst the first countries to produce an Act.

In the area of genetic resources Patent Amendment Act, 2005 has been enacted to address Patent incorporating genetic resource.

WIPO – Introduced.....

WIPO is a United Nations Agency specializing in intellectual property and therefore any discussion at WIPO becomes a multilateral discussion. Member States will then formulate and advance policy positions.

At WIPO a model of sui generis was canvassed, and some of the member states supported and adopted the sui generis model of protection.

South Africa led by Department of Trade and Industry adopted a different approach by protecting the indigenous knowledge using intellectual property system and/or laws hence the amendment of Trademarks Act, 1993 , Designs Act, 1993 and the Copyright Act, 1978.

The position held by South Africa is that protection of indigenous knowledge must take place in the IP system as misappropriation takes place within the system itself. In our view sui generis system cannot harvest benefits for the indigenous communities.

WIPO Discussions

The subject matter of indigenous knowledge (traditional knowledge as termed by WIPO) was discussed at WIPO as early as 2001 through its established expert committee of Intergovernmental Committee (IGC)

IGC was established to debate the subject matter of indigenous knowledge using WIPO rules and procedures.

This was as a result of concerns raised by some of WIPO members who observed misappropriation of indigenous treasures within the intellectual property regime.

South Africa participated at the early stages of the discussion due to the importance of indigenous knowledge to its indigenous citizenry.

South Africa has shared with WIPO its draft Act indigenous knowledge.

Indigenous Knowledge – defined (WIPO)

Traditional Knowledge

A living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

Traditional Cultural Expressions

Forms in which traditional culture is expressed; passed down from generation to generation, they form part of the identity and heritage of a traditional or indigenous community.

Genetic Resources

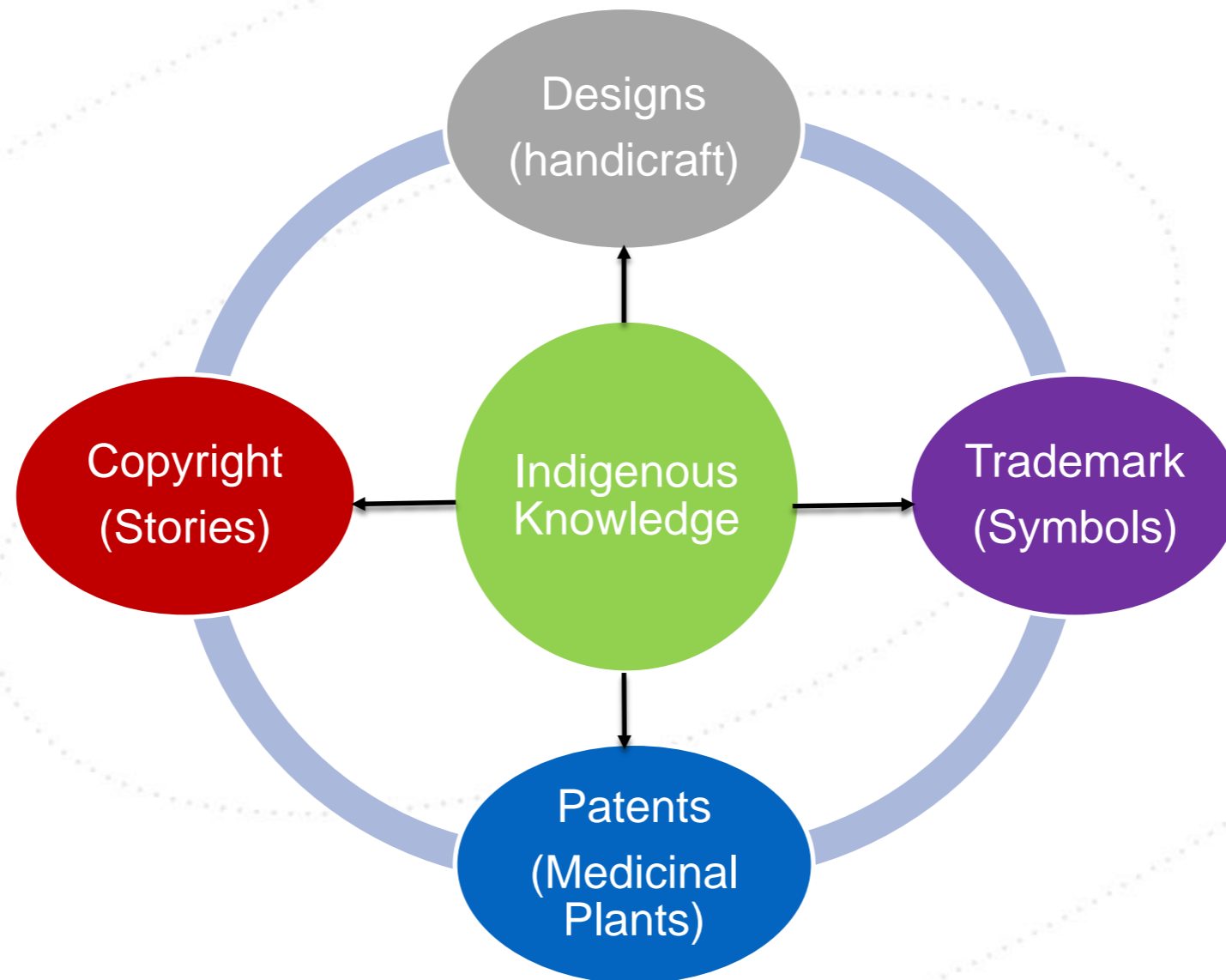
Genetic material, which are any material of plant, animal, microbial or other origin containing functional units of heredity, of actual or potential value.

Indigenous Knowledge - IPLAA

Indigenous knowledge means any form, tangible or intangible, or a combination thereof, in which traditional culture and knowledge are embodied, passed on between generations and tangible or intangible forms or creativity of indigenous communities, including but not limited-

- a) phonetic or verbal expression such as stories, epic, legends, poetry, riddles, and other narratives, words, signs, names or symbols;
- b) musical or sounds expressions such as songs, rhythm, or instrumental music, the sounds which are the expressions of rituals;
- c) expression by action, such as dances, play , ceremonies rituals , expression of spiritual or religion, sports, traditional games, puppet performances ; and other performances, whether fixed or unfixed; and
- d) Tangible expressions , such as material expression of art, handicrafts, architecture, or tangible spiritual forms, or expressions of social places.

Indigenous Knowledge – Source of IP



The Act - Law

The Act introduces the requirements of:

- Prior informed consent
- Disclosure of source of origin
- Benefit sharing scheme (arrangement)

The Act further introduces:

- National Council
- Trust Fund
- National Database – Recordal of IK

The Act – Law (cont'd)

- Derivative designs / trademarks / copyright
- A separate identifiable registration for the derivatives from the current IP registers
- Alternative Dispute Resolution (ADR)
- Perpetual protection of IK

Benefits of the IKS

- As IP system is viewed as a Western system, Indigenous Knowledge system is also viewed as an African system
- Recognition of Indigenous know - how
- Holders / Owners of IK will share in the commercialization of derivative IP
- The holders / Owners of IK may own the derivative IP as well
- Developmental Agenda – Indigenous Communities funded to preserve their indigenous treasures (Kenya Masai indigenous community as an example)
- It can contribute to Economic growth of the country if properly implemented

Challenges

- The broadness of IKS Scope warrants collaboration between various stakeholders e.g. CIPC, Government Departments, Business Sector and Indigenous Communities.
- Creating understanding between Intellectual Property and Indigenous Knowledge systems
- Capacity Building to the holders of indigenous knowledge and communities
- Language of communication is also a challenge when communities are engaged
- Buy-in from the business sector (creative industries) remains a challenge
- Fragmented approach to indigenous knowledge system

Thank You

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