



INTELLECTUAL PROPERTY REFERENCE GUIDE



for Small Law Firms
and SMMEs



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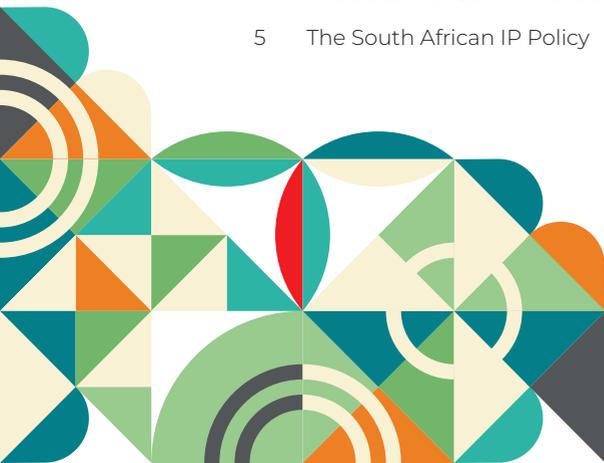


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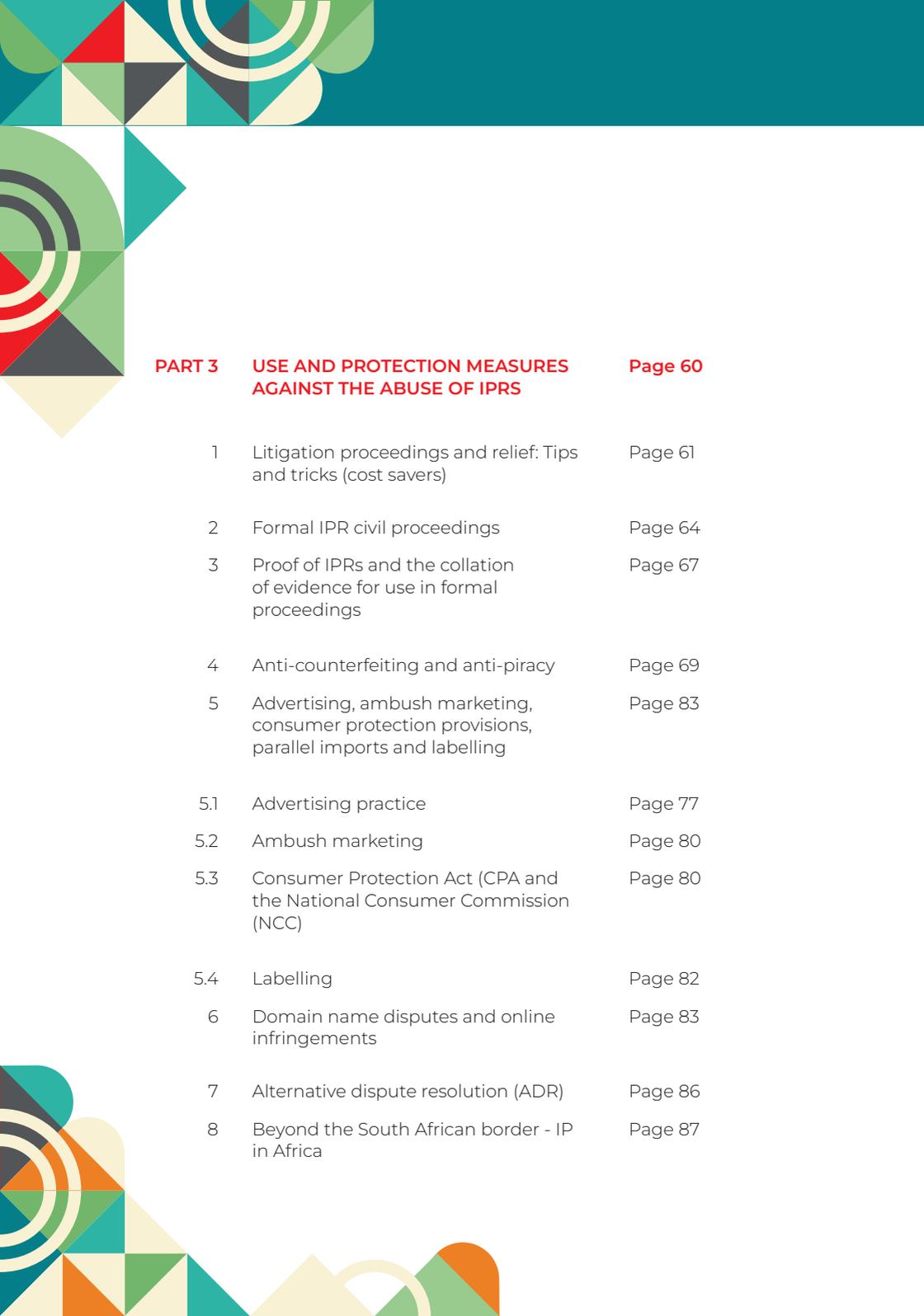
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FOREWORD

The protection and promotion of intellectual property (IP) are vital drivers of innovation, economic growth, and job creation in South Africa. For small, medium, and micro enterprises (SMMEs), effective IP management can transform ideas into valuable business assets, fostering sustainable growth. However, many SMMEs struggle to navigate the complexities of IP due to high costs, legal barriers, and limited access to support.

Recognising this challenge, the Companies and Intellectual Property Commission (CIPC) and the Swiss Federal Institute of Intellectual Property (IPI) have partnered to create this reference guide for small law firms in South Africa. Small law firms often serve as the first point of legal contact for SMMEs, yet without specialised IP knowledge, they may miss opportunities to help their clients protect and commercialise their innovations. This guide bridges that gap by equipping attorneys with practical insights and tools to better support SMMEs in leveraging IP for growth.

What This Guide Offers:

- A clear overview of the IP value chain, including registration, portfolio management, and commercialisation strategies.
- Guidance on protecting IP globally beyond South African borders.
- Practical advice on IP valuation and negotiation skills to help clients maximise their IP assets.
- Information on support structures, funding opportunities, and government resources available to SMMEs.

A key aim of this collaboration is to dispel the notion that the IP system exists solely for IP specialist legal professionals. Instead, this guide highlights its practical benefits and underscores the critical role of small law firms in fostering innovation and entrepreneurship. By equipping small law firms with the right knowledge, they can help SMMEs safeguard their ideas and contribute to South Africa's broader socio-economic development goals.



Beyond legal protection, this guide promotes a self-sustaining ecosystem where businesses understand their IP rights and responsibilities. By viewing IP as a strategic business tool rather than just an administrative process, SMMEs can enhance competitiveness, attract investment, and drive job creation.

Additionally, this guide supports capacity building by ensuring that small law firms can:

- Advise clients on protecting their IP assets.
- Connect SMMEs with relevant government departments and business support organisations.
- Facilitate access to funding for IP protection and commercialisation.

Strengthening the ability of small law firms to provide informed, practical, and timely IP advice will help build a more inclusive and robust IP ecosystem in South Africa. This, in turn, will empower SMMEs to navigate the IP landscape, protect their innovations, and unlock new opportunities for growth.

We extend our gratitude to the Swiss IP Office for their invaluable support and collaboration on this initiative. We encourage small law firms to use this guide as a tool to drive positive change in their practices and communities. Together, we can build a more resilient, innovative, and economically vibrant South Africa, where intellectual property is valued, protected, and celebrated.



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(CIPC)*



We welcome you to this Guide on Intellectual Property for Small Law Firms and Small, Medium and Micro-Enterprises. This Guide is one of the many results accomplished by the collaboration between the Republic of South Africa and the Swiss Confederation, realised through the Swiss-South African Intellectual Property Project (SSAIP). The SSAIP is funded by the Swiss State Secretariat of Economic Affairs (SECO) and implemented by the Swiss Federal Institute of Intellectual Property (IPI).

We hope that, in addition to being informative, this Guide will support and encourage you to gain a deeper understanding of intellectual property (IP). As a legal practitioner, a team member of an enterprise or someone who is about to embark on their own professional endeavours, this Guide will provide you with key concepts, insights, and tips regarding IP basics and related topics.

In cooperation with the Companies and Intellectual Property Commission (CIPC) of South Africa and national legal experts, we have also identified tools and resources to assist you in navigating the IP-related matters within the creative industries and innovation ecosystems.

We believe that with such knowledge and understanding, you will be equipped to offer your support and services to those in search of answers, to move their ideas into action.

We thank you for reading this Guide and wish you the very best on your IP journey.



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Swiss Federal Institute
of Intellectual Property

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DISCLAIMER

This guide should not be treated as a substitute for legal advice. The information contained in this handbook is of a general nature and is intended as a guide only. Professional advice should be taken before any course of action is pursued. IP practice is ever evolving and provisions, laws and practice change and develop from time to time. Care should be taken to review your position against the current practice and legal requirements.

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This Guide was created under the Swiss Intellectual Property Project, in collaboration with the Companies and Intellectual Property Commission and the Swiss Federal Institute of Intellectual Property.



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Special thanks to the Swiss State Secretariat for Economic Affairs for funding the project.



PART 1

UNDERSTANDING IP RIGHTS IN THE INTERNATIONAL LANDSCAPE



1. INTELLECTUAL PROPERTY (IP) AND THE UNDERLYING INTELLECTUAL PROPERTY RIGHTS (IPR)

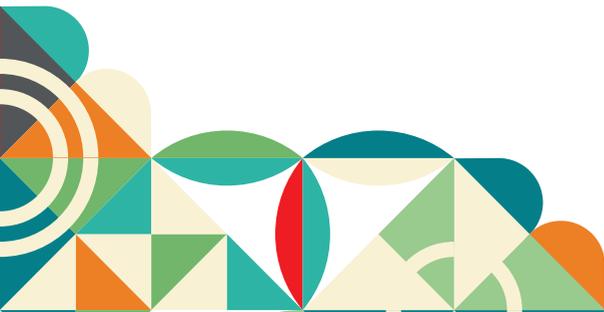
Intellectual Property (IP):

A set of intangible assets that are the result of ideas, knowledge, creativity, innovation, and reputation.

IP covers two broad categories of rights: namely, industrial property, and copyright (including neighbouring rights).

- **Industrial property:** Covers industry-related IP assets of economic importance. The main types of industrial property include:
 - **Trade marks:** Used to distinguish goods or services;
 - **Patents:** For inventions;
 - **Designs:** Related to the appearance (aesthetic design) or function (functional designs) of industrial products.
- **Copyright and neighbouring rights:**
 - **Copyright:** Protects the original works, focused primarily on the creative industries, protecting the creators of works, such as artistic and literary works.
 - **Neighbouring rights:** The type of copyright-related rights that protects rights of people who are not the creators of the work, such as performing artists, producers, and broadcasters.

Intellectual Property Rights (IPRs): Legal protections that give the creator ownership of the IP, providing exclusive rights of use and the right to earn recognition or gain financial benefit, usually for a limited period.



2. TYPES OF IPRS AND THE INTER-RELATIONSHIP BETWEEN THESE RIGHTS

IPRs can come into being through both statute and common law:

- **Statutory rights:** Several statutes (Acts) protect IPRs, including trade marks, copyright, performer's protection rights, patents, designs, and plant breeders' rights.
- **Common law rights:** Established legal principles and rules derived from common law and set by legal precedents in the courts. These apply when legislation does not, or they can be relied upon alongside statutory rights. For example, if a business does not register its trade mark, it can use common law actions such as unlawful competition or passing off to act against unauthorised use of the mark. Common law is continuously developed and enforced by the courts.

Although each IPR subsists and is enforced separately, a single product or creation can contain several underlying rights, which overlap with each other.

EXAMPLE: KREEPY KRAULY – A CASE STUDY OF IPRS IN PRACTICE

Let us use Kreepy Krauly, the renowned swimming pool cleaner invented in South Africa in the 1970s, to illustrate how different types of IPRs intersect in a single product.

- The name Kreepy Krauly is registered as a trade mark, for the purpose of distinguishing its products from similar products in the market.
- Copyright law protects original creations related to the Kreepy Krauly products, such as product drawings, photographs, instruction manuals, advertising materials, and packaging designs.
- The Kreepy Krauly invention, titled “cleaning apparatus for submerged surfaces,” was patented in 1977.
- Any new aesthetic and functional features of the Kreepy Krauly products, along with related parts and fittings, may be registered as designs.
- Trade secrets, including technical information about the manufacturing process, research data, and commercial information of the Kreepy Krauly products, are closely guarded.
- Common law protects the reputation and goodwill acquired through the use of the Kreepy Krauly products over time, including the advertising goodwill.

Each of these IPRs will be covered in more detail in Part 2.



TRADE SECRETS

Technical information, manufacture process, research data, commercial information



TRADE MARKS

Words, names, letters, numerals, logos, colours, shape configuration



COMMON LAW & CONTRACTUAL

Reputation advertising, goodwill, sale and distribution rights



PATENTS

Inventions and methods for improvements & innovations



COPYRIGHT

Logo design, drawings, instruction manuals, photographs, advertising material, website content & layout



DESIGNS

Aesthetic and functional, features of the products, parts & fittings



3. UNDERSTANDING THE TERRITORIALITY OF IPRS AND LIMITS OF PROTECTION THROUGH REGISTRATION

The principle of territoriality, a fundamental principle of international IP law, provides that a state has authority over acts that take place within its own territory and allows states to design their IP laws to achieve specific societal goals. According to the principle of territoriality, IPRs are limited to the territory where they have been granted.

Given the territorial nature of IPRs, an IPR registered in South Africa does not automatically give the IPR owner rights beyond the territory's borders. As such, protection is required to be sought in each territory where the IPR is used in trade outside of South Africa.

Increased cross-border trade prompted states to enter international treaties to protect their citizens' IPRs in other countries. These agreements also set minimum standards and promote IP protection while avoiding trade barriers.

South Africa is a member of several important international IP treaties and agreements including:

- **The Paris Convention for the Protection of Industrial Property of 1883 (Paris Convention)**, one of one of the first major IP treaties, establishing a union of IP countries to protect industrial property.
- **The Berne Convention for the Protection of Literary and Artistic Works of 1886 (Berne Convention)**, for the international protection of copyright.
- **The Patent Cooperation Treaty of 1970, (PCT)** providing a unified procedure for filing patent applications to protect inventions in each of its contracting states, effective in South Africa from 16 March 1999.
- **The Agreement on Trade-Related Aspects of IP (TRIPS Agreement) of 1994**, which introduced IP into the multilateral trading system, set internationally accepted minimum standards for IP protection and enforcement, and allowed states flexibility to adapt national IP laws to match the level of their technical and economic development.



CIPC administers these treaties, as well as the Budapest treaty, on behalf of South Africa. It is anticipated that South Africa will conclude accession to the Hague Agreement and the Madrid Protocol in the future, which will require CIPC to administer these treaties as well¹.

Although individual states are responsible for the creation of their own IP laws, there are several international organisations that deal with IPRs, including:

- **World Intellectual Property Organization (WIPO)**, a UN agency set up in 1893, provides services that protect and promote IP across borders and administers the Paris and Berne Conventions, as well as other international treaties. South Africa has been a member of WIPO since 1975².
- **World Trade Organization (WTO)**, established in 1995, deals with rules of trade between nations, promoting economic development through trade, providing the legal ground rules for international trade and binding governments to keep their trade policies within agreed rules. The WTO administers the TRIPS Agreement. South Africa has been a WTO member since 1995³.
- **World Customs Organization (WCO)** works on customs related matters, including the development of international conventions and standards on customs enforcement responsibilities. South Africa has been a member of the WCO since 1964⁴.
- **International Criminal Police Organization (INTERPOL)** assists police forces around the world to work together to combat international IP crime, particularly in relation to counterfeiting, piracy and cybercrimes⁵.

¹ CIPC website: Corporate and IP legislation administered by CIPC: https://www.cipc.co.za/?page_id=2721

² WIPO Portal: <https://www.wipo.int/portal/en/index.html>

³ WTO website: <https://www.wto.org/>

⁴ WCO website: <https://www.wcoomd.org/>

⁵ Interpol website: <https://www.interpol.int/en>



4. THE SOUTH AFRICAN IPR LANDSCAPE

South Africa has a mixed legal system, a hybrid of Roman Dutch civil law, English common law, and Indigenous or customary law. South Africa is a constitutional state, with a supreme Constitution and a Bill of Rights, with all laws required to be consistent with the Constitution. International agreements become law in South Africa when enacted into law by national legislation.

The common law is extensively modified by statutes and interpreted by the Superior Courts.

Important statutes relating to IP in South Africa include:

- [Trade Marks Act](#), 194 of 1993
- [Designs Act](#), 195 of 1993
- [Patents Act](#), 57 of 1978
- [Copyright Act](#), 98 of 1978
- [Registration of Cinematograph Films Act](#), 62 of 1977
- [Performers Protection Act](#), 11 of 1967
- [Plant Breeders' Rights Act](#), 15 of 1976
- The [Counterfeit Goods Act](#), 37 of 1997
- [National Environmental Management: Biodiversity Act](#), 10 of 2004
- [Merchandise Marks Act](#), 17 of 1941 and [Merchandise Marks Amendment Act](#), 61 of 2002
- [Agricultural Products Standards Act](#), 119 of 1990, and
- [Intellectual Property Rights from Publicly Financed Research and Development Act](#), 51 of 2008



The Companies and Intellectual Property Commission (the CIPC) is an agency of the Department of Trade, Industry and Competition (the dtic) in South Africa. CIPC's primary institutional mandate is derived from the Companies Act, which establishes CIPC as a juristic person. CIPC's functions include:⁶

- **Registration of companies and co-operatives:** Facilitating the official formation of business entities in South Africa;
- **IP Protection:** Managing the registration, maintenance and safeguarding of trade marks, copyright, designs and patents;
- **Public disclosure:** Ensuring transparency by providing access to business registers;
- **Compliance monitoring:** Adherence to financial reporting standards;
- **Education and enforcement:** Promoting legal awareness and implementing legislation efficiently; and
- **Business rescue licensing:** The accreditation of professionals to assist in the business rescue process.

The CIPC website provides a useful source of information and related links for the protection and maintenance of IPRs in South Africa. Likewise, it provides access to applicable legislation that it administers relating to corporate and IP regulations. This Section of the website also provides access to copies of previously published practice and guidance notes.⁷

CIPC IPOnline: The official portal for IPR services in South Africa. You will need to register as a CIPC customer as well as create an IPOnline user profile to log into the IPOnline system. Users who log in using CIPC customer accounts can create beneficiary accounts that will use funds from customer accounts for IP transactions.⁸

⁶ CIPC Functions: https://www.cipc.co.za/?page_id=685

⁷ CIPC website: <https://www.cipc.co.za/>

⁸ CIPC IPOnline: <https://iponline.cipc.co.za/>

5. THE SOUTH AFRICAN IP POLICY

The South African IP Policy was approved on 30 May 2018, driven by the need for a comprehensive IP Policy that promotes a holistic, balanced and coordinated approach to IP that is mindful of the rights enshrined under the South African Constitution, in particular, the property rights prescribed under Section 25 of the Constitution. The comprehensive IP Policy will be implemented in a phased approach.

The IP Policy is an integral part of the broader development strategy for transforming the South African economy through various measures, with the key objectives of increasing local innovation, manufacturing and generating more employment.

The IP Policy regulates IPRs in line with the Constitution by introducing policy reforms suited to South Africa's development dynamics. Its aim is to provide effective IP protection, promote innovation, support competitive advantages, and ultimately transform and improve the economy.⁹

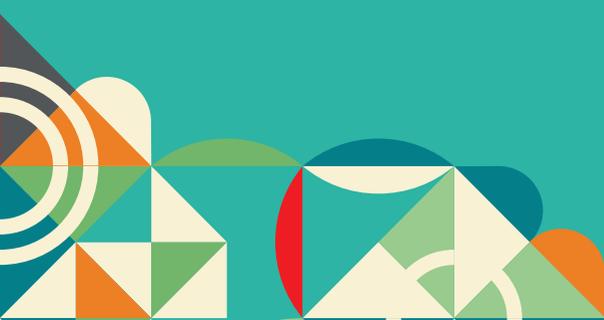


⁹ Intellectual Property Policy of the Republic of South Africa Phase 1: https://www.gov.za/sites/default/files/gcis_document/201808/ippolicy2018-phase1.pdf



PART 2

UNDERSTANDING
THE TYPES OF IPRS IN
THE SOUTH AFRICAN
CONTEXT





1. TRADE MARKS

Businesses can obtain trade mark rights through both common law and statutory registration:

- **Common law rights** arise from actual use of a mark in trade, and provides limited rights based on first-to-use, meaning the first party to use a mark in connection with specific goods or services, and building a reputation and goodwill associated with the mark.
- **Trade mark registrations**, on the other hand, provide a means of officially recording your trade mark rights, serving as proof of the nature and scope of the rights that someone has acquired through registration.

The primary legislation governing trade marks in South Africa is the [Trade Marks Act, 194 of 1993](#), which provides the legal frame work for the protection, registration, and enforcement of registered trade mark rights. The accompanying [Trade Marks Regulations](#), outline the specific procedures, requirements and conditions relevant to the registration and maintenance of trade marks.

Trade marks: Trade marks are distinctive signs or symbols used in the marketplace to identify and differentiate identical or similar goods or services of one trader from another.

Trade marks play a crucial role in the economic landscape, and its significance for businesses operating in and from South Africa cannot be overstated. Trade marks are vital for establishing brand recognition and differentiation in a highly competitive business environment and contribute to building trust and a positive reputation among consumers.

Registering a trade mark: The registration of a trade mark provides legal protection and exclusive rights to the trade mark owner, giving businesses a competitive edge in the market place. A well-protected trade mark can become a valuable financial asset for a business and defend against counterfeits. As a business grows and gains market recognition, the trade mark value increases¹⁰

- **Trade mark nature:** There are three types of trade marks: ordinary, certification and collective marks. When applying for trade mark registration, you will be required to identify the trade mark type.

¹⁰ CIPC – Article - The Importance of Trade Mark Protection August 2023: <https://www.cipc.co.za/wp-content/uploads/2023/08/ARTICLE-THE-IMPORTANCE-OF-TRADE-MARK-PROTECTION-Aug-23.pdf>

- **Ordinary trade marks:** Marks used in trade to distinguish the goods or services of one entity from those of another. An ordinary mark can only be used by the owner or with the authority and consent of the owner. Ordinary trade marks include any sign capable of geographical representation, including a device (visual representation or illustration), name, signature, word, letter, numeral, shape, configuration (arrangement of parts or elements), pattern, ornamentation, colour, container for goods, or any combination of marks.

Example:



- **Certification trade marks:** Used to certify characteristics, quality or standard of the goods or services. The trade mark owner may not trade in the goods or services, as the owner acts as an independent certifying body regarding those goods or services. Upon examination of the application, the trade mark owner will be required to provide the rules governing the use of the trade mark as well as a statement of case and evidence in affidavit form.

Example:



- **Collective trade marks:** Trade marks owned by an association and used by the association members to show characteristic features of the products or services in order to distinguish the goods and services from those of other entities. The trade mark owner and the members of such association may use the mark. Geographical names or other indicators of geographical origin may be registered as collective trade marks. On examination, the rules of the association governing the use of the trade mark will be required.

Example: **STELLENBOSCH FARMERS' WINERY**

- **Graphic Representation:** A trade mark must be capable of being represented graphically for users of the Trade Marks Office Register to identify the type of trade mark and the scope of protection granted.

TIP



CIPC published the Guidelines on the Examination of Trade Mark Applications Version 3A (August 2019), providing valuable insight into the practice of the Office of the Registrar of Trade Marks, and covering filing formalities, formal and substantive examination and post examination procedure. The Guidelines include annexures comprising notices and forms in use, including guidelines on filing of non-traditional trade marks.

- **Distinctiveness:** A trade mark is only protectable if it is distinctive. This means it should stand out and not be generic or commonly used within your relevant industry. A mark is considered distinctive if, at the time of application for registration, it is inherently capable of distinguishing the goods or services, or if it has acquired distinctiveness through prior use.

Marks that are descriptive (indicating the kind, quality, quantity, intended purpose, value, or other characteristics of the goods or services, or have become customary or reasonably required in trade), cannot be registered as trade marks, as they lack distinctiveness. The more distinctive the trade mark is, the broader the protection it receives.



TIP

CIPC TIPS WHEN CHOOSING TRADE MARKS¹¹

<p>Avoid descriptive marks</p>	<p>The registration of a trade mark consisting of descriptive terms for products or services are not allowed.</p>	<p>E.g., generic expressions, laudatory words, and geographical origin.</p>
<p>Avoid generic features</p>	<p>It is not permitted to apply for trade mark registration/ protection for features, shapes, colours, and patterns that have become standard (generic) in the relevant industry.</p>	<p>Considering the current language and practices within a specific trade.</p>
<p>Avoid use of protected state emblems, flags, and other official signs</p>	<p>Trade marks containing state emblems, flags, and other official signs and insignia are not permitted to be registered as trade marks.</p>	<p>In practice, during the examination process, CIPC will request you to furnish proof of the requisite consent.</p>
<p>Avoid deceptive or offensive marks</p>	<p>It is not possible to apply for registration of trade marks which are inherently deceptive, likely to cause confusion, against the law, contrary to morality or offensive to a group of persons.</p>	<p>E.g., <i>Inherently deceptive</i>: falsely suggests a particular ingredient in a product that is not present.</p> <p><i>Likely to confuse</i>: may lead consumers to mistake the product or service for another due to similarities.</p> <p><i>Contrary to law</i>: encourages or glorifies illegal activities.</p> <p><i>Contrary to morality</i>: explicit or offensive content.</p> <p><i>Offensive to a group of persons</i>: includes offensive stereotypes or slurs directed at a particular group of persons.</p>

¹¹ Summary extracts taken from the CIPC Article: The How, where and what of trade mark registration for SMMEs in South Africa: Part 3: Navigating registrability of trade marks

<p>Avoid choosing a trade mark that is the same or similar to trade marks already registered or applied for</p>	<p>It is specifically prohibited to register a proposed trade mark that is either identical or confusingly similar to a prior trade mark already registered by another proprietor, or a prior trade mark application in relation to the same or similar goods or services.</p>	<p>Conducting a proper trade mark search before submitting your application is crucial.</p> <p>A refusal herein can be overcome by obtaining a written consent from the owner of the prior trade mark registration/ application, allowing the trade mark to coexist without causing confusion or deception.</p>
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TIP

Descriptive words or elements can be included in an application for registration, such as figurative marks, or by adding additional distinctive characteristics, and/or other registered trade marks, provided the new composite mark meets the requirements for distinctiveness. The descriptive element will be disclaimed, and the registration of the mark will not grant any rights to the descriptive element separately, apart from the composite mark as registered.

- Conducting trade mark searches:** It is highly recommended that a search of the Trade Marks Register is conducted to check the availability of the mark prior to commencing use, and/or filing an application for registration of a trade mark. You can either conduct a free cursory e-search, or conduct a paid commercial search on [CIPC IPOnline](#), or you can request a special search from the CIPC¹².

¹² The search process and application process are dealt with in detail in the CIPC Article: The How, Where and What of Trade Mark Registration for SMEs In South Africa Part 2: The Trade Mark Application Process - 2 December 2023

- **Registering trade mark rights:** Registration of your trade mark under the provisions of the Trade Marks Act provides statutory protection for your mark. Although trade marks may be used without registration, such common law protection is more difficult and costly to enforce, as you are required to prove the subsistence of the underlying right. In the case of registered trade marks, the registration certificate provides prima facie evidence of the owner's right to the use of the mark.

- **Requirements for the registration of a trade mark:**
 - **Single/Series trade mark:** When registering a trade mark with the CIPC, you can apply for either a single trade mark (a single distinctive mark for specific products or services falling in one class), or a series of trade marks (allowing for the registration of multiple trade marks that are variations of the core trade mark, or the same trade mark used for different but related goods or services).

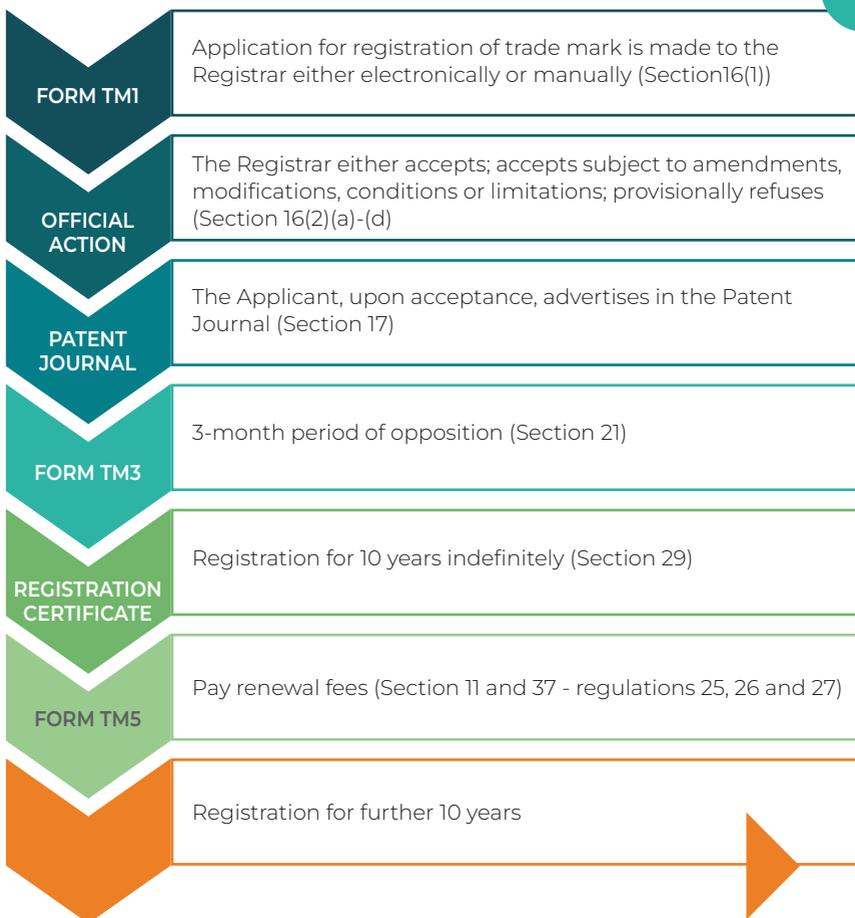
 - **Applicant:** Only the bona fide proprietor of the trade mark, which is used or intended to be used in respect of the goods or services covered by the application, may apply for registration of the trade mark. As such, a licensee cannot apply to register a trade mark in their own name. The trade mark applicant may be a natural person, or a juristic person such as a company, or a trust. If a trade mark is filed in the name of the trust, the applicant must be cited as "*The trustees for the time being of the (insert Trust name) Trust*". Any change of name or description of the applicant, the transfer or assignment of the trade mark must be applied for at CIPC by lodging the prescribed form and supporting documents and on payment of the official fees stipulated in the regulations.



- **Applicant address:** The applicant's address and any change of address is required to be recorded with the CIPC.
- **Address for service:** The physical address within South Africa where you can receive correspondence from the CIPC or third parties about your application or registered rights. Where an applicant applies without legal representation, the details should match the applicant's details. A Power of Attorney is required where the application is filed on behalf of the applicant. Only practising attorneys with valid Fidelity Fund Certificates may represent trade mark applicants, or applicants may represent themselves. Accountants, tax practitioners and the like may not represent trade mark applicants.
- **Trade mark type:** When applying for trade mark registration, the applicant will select 'verbal' for a word mark, where the actual word mark will be typed in the application form. Alternatively, for a device trade mark, such as a logo, stylised word mark, shape, or configuration of the product, the applicant will select 'image' and be prompted to upload a representation of the mark they seek to protect in the application form.
- **Classification of goods and services:** South Africa follows the Nice Classification for the classification of goods and services as applied for the registration of marks¹³. When filing the application, you are required to include the class number from one of the 45 classes of goods or services, and the standard class heading will automatically list the goods or services. Make sure your relevant goods or services fall into this class and are properly described. If the goods or services in relation to which a trade mark is used or intended to be used fall in different classes, a separate application must be filed in each class covering the relevant goods or services.

¹³CIPC Practice Notice 1 of 2025 – The new 12th Edition (12-2025) of the Nice Classification of Goods and Services, applies to all trade mark specifications from 1 January 2025.

- **The trade mark application process:** Trade mark applications are filed manually by lodging a form TM1, or online using the [CIPC IPOnline](#) portal for IP services, after registering as a CIPC customer and depositing funds into your CIPC customer account.
- **The lifecycle of a trade mark:**



- **Processing of application:** On processing and payment of the application you will receive the allocated official application number, showing the application date via automated email. This proves that you have filed an application and provides priority rights in the case of any identical or similar applications filed subsequently by third parties. The trade mark is only enforceable under the Trade Marks Act once registered. At any stage of the trade mark lifecycle, you may commence use of the annotation “TM” to indicate that the mark functions as a trade mark. The ® symbol can only be used once the trade mark is registered.
- **Examination:** The CIPC will thereafter attend to the examination of the application for compliance with formalities and substantive examination.¹⁴
- **Official action:** Once examined, the CIPC will issue an official action where the application is either accepted, accepted with conditions, or provisionally refused.
- **Prosecution term:** The trade mark applicant is given a three-month period to prosecute the application and formally respond to the official action. If further time is required, an application for an extension of the prosecution term must be requested through CIPC Online. If the prosecution term expires, you will be required to apply to the Registrar of Trade Marks for condonation for the late extension of the prosecution term. Failure to respond to the official action before the expiry of the prosecution term or extended term will result in the lapse of the application.
- **Acceptance and advertisement:** Once a trade mark application is accepted, the CIPC will issue a Notice of Acceptance electronically. The trade mark applicant is required to submit the advertisement of acceptance electronically for publication in the Patent and Trade Mark Journal, which is published electronically and monthly on the CIPC website. It is recommended that the trade mark proprietors consistently peruse the Journal to look out for any trade marks which may adversely affect their rights.
- **Opposition:** Any interested person has three months from the publication date of the Patent and Trade Mark Journal, to file a notice of opposition against the trade mark proceeding to registration. The opposition period may be extended in three-monthly intervals on application by the Opponent and agreement by the trade mark applicant. The first extension is granted automatically by the Registrar of Trade Marks and thereafter, the Opponent must obtain the consent of the trade mark applicant for further extensions of the opposition term.

¹⁴CIPC *Guidelines on examination of Trade Mark Applications* provides insight into filing formalities, formal examination and substantive examination

- **Registration:** If no opposition is encountered, and the opposition term has lapsed, the trade mark registration certificate is issued electronically and should be checked by the CIPC for correctness. The ® symbol can only be used once the trade mark is registered in South Africa.
- **Renewal and restoration:** Trade mark registrations are renewable in 10-year intervals, calculated from the date of application, and not the date of registration. If missed, a late renewal can be done within 12 months after the expiration and upon payment of a late renewal fee. If not renewed, the trade mark registration may be removed from the register, although it may be restored through a prescribed restoration procedure.
- **Rights granted by the registration of trade marks:** Registering a trade mark grants the owner several rights, including the following: the exclusive right to use the trade mark or to authorise others to use it, the right to take legal action against anyone using the same or a confusingly similar trade mark, and the right to use the trade mark as security for loans.
- **Duration of trade mark rights:** The trade mark may be renewed indefinitely, on application, for subsequent 10-year periods. If the trade mark is not used in relation to the goods or services, for which it is registered, for a period of five years or longer after the date of registration, any interested person may apply for the cancellation of the trade mark registration.
- **Protection of a well-known trade mark:** The only protection afforded to unregistered trade marks under the provisions of the Trade Marks Act, is in respect of a mark which is classified as a well-known trade mark under the Paris Convention. These provisions entitle the proprietor of the unregistered well-known mark to oppose any application and/or restrain the use of a trade mark which constitutes, or an essential part of which constitutes, a reproduction, imitation, imitation, or translation of the well-known trade mark in relation to the goods or services in respect of which the trade mark is well-known, and where the use is likely to cause deception or confusion.

TIP



Remember to diarise the important dates for actions to ensure compliance with the time periods to avoid the application being withdrawn or the registration lapsing.



2. COPYRIGHT AND NEIGHBOURING RIGHTS

Copyright: A legal right that protects original creative and artistic works of the mind and gives the owner the right to control and profit from their work and to stop any unauthorised use of the work.

Copyright in South Africa is governed by the Copyright Act, 98 of 1978, and its amendments, the Registration of Copyright in Cinematograph Films Act, 62 of 1977, and the related regulations. Copyright law protects the copyright, subsisting in a wider range of works.

- **Registration not a requirement:** Unlike other forms of statutory IPRs, registration is not a requirement for the subsistence of copyright in South Africa. The Copyright Act sets out certain conditions for the subsistence of copyright, and if met, copyright subsists automatically once the work is captured in a material form, meaning that it must be written down or otherwise recorded in a tangible way. The only type of copyright work that may be registered in South Africa, although not compulsory, is a cinematograph film in terms of the provisions of the Registration of Copyright in Cinematograph Films Act.
- **International arrangements:** South Africa is a signatory to the Berne Convention and the TRIPS Agreement, which obliges South Africa to grant recognition and protection to copyright works created in other signatory countries. Similarly, copyright works protected in South Africa are also protected in other Berne Convention member states.¹⁵

¹⁵ List of Berne Convention member states accessed at https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=15

- Protected works:** The Copyright Act specifies certain types of works that are protected. The following types of works, if original, are eligible for copyright in South Africa:

Literary Works	Novels, dramatic works and scripts, textbooks, reports, lectures, and tables and compilations.
Musical Works	Work comprising music, exclusive of any words or action intended to be sung, spoken, or performed with music.
Artistic Works	Paintings, sculptures, drawings, engravings, photographs, works of architecture, and works of craftsmanship.
Cinematograph Films	Motion pictures—any fixation or storage on film or any other material data, signals, or a sequence of images, and includes soundtracks associated with the film and video games.
Sound Recordings	Any fixation or storage of sounds, or data or signals representing sounds, capable of being reproduced, excluding motion picture sound tracks.
Broadcasts	Telecommunication service of transmissions comprising sounds, images, or signals for simultaneous reception by members of the public.
Programme-Carrying Signals	A signal embodying a programme which is emitted and passes through a satellite.
Published Editions	First print of a particular typographical arrangement of a literary or musical work.
Computer Programs	Set of instructions fixed or stored, when used directly or indirectly in a computer, and directs its operation to bring about a result.

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- **Importance of correctly classifying a work:** If a work cannot be classified within one of these types, the work is not protected under South African copyright law. Furthermore, certain aspects of copyright differ based on the type of work identified, such as authorship and ownership, duration of right, the nature of copyright, general exceptions, and permitted use. It is therefore imperative to properly identify and classify the work in question, to understand properly the scope of protection afforded under the provisions of the Copyright Act (as amended) for that specific type of work.

 - **Requirements for subsistence of copyright:** The Copyright Act prescribes certain conditions for copyright to exist, and if met, copyright subsists automatically.
 - **Protected work:** Be a type of 'work' eligible for copyright protection in terms of the Act.
 - **Originality:** The work must be the product of the creator's own efforts and skills and not be copied from other sources. The work does not have to be inventive or new.
 - **Material form:** Copyright does not subsist in an idea or concept alone, but rather it is the material embodiment of that idea or concept that is protected. In other words, the work must be written or otherwise reduced to a material form, except in the case of a broadcast (for obvious reasons) where the work will not be eligible for copyright protection until it has been broadcast, and in the case of the programme carrying signal, where it has been transmitted by satellite.
 - **Author is a qualified person:** In the case of an individual, the author is a person who is a South African citizen or is domiciled or resident in South Africa; or in the case of a juristic person, an entity incorporated under the laws of South Africa. Given that South Africa is a signatory to the Berne Convention, any foreign individual or juristic person belonging to a Berne Convention country will be recognised as a "qualified person" in our law.

 - **First publication:** If the author is not a qualified person, the work must, in the case of a literary, musical, or artistic work, a sound recording, a cinematograph film, a published edition or a computer programme, have been first published in South Africa or a Berne Convention member state. In the case of a cinematograph film, a broadcast or a computer programme, these must have been made in the Republic of South Africa, or in the case of a programme-carrying signal, have been emitted to a satellite from a place in the Republic of South Africa.
- 



■ **Authorship and ownership of copyright:**

- **General rule:** The author (creator) is the owner of the copyright, or in the case of a work of joint authors, copyright is owned collectively by the co-authors of the work.
- **Commissioned works:** For commissioned works paid in money (other than the taking of a photograph, painting, or drawing of a portrait, the making of a gravure, cinematograph film or sound recording), the author remains the owner, and copyright is required to be assigned in writing to ensure ownership passes to the person commissioning the work.
- **Course and scope of employment:** Where the work is made during the course and scope of employment under a contract of service or apprenticeship, the employer is the initial owner of the copyright. An employment or an apprenticeship agreement can exclude the operation of this provision.
- **Literary or artistic works made for publication in a magazine or newspaper:** The proprietor of the newspaper or magazine is the initial owner of the work for the purpose of being so published, but in all other respects, copyright vests with the author.
- **State works:** In the case of a work made by or under the control of the state or an international organisation, the state or such international organisation owns the copyright.

- **Proof of subsistence of copyright and ownership:** As there is no certificate of registration for copyright works, you need to prove the subsistence of copyright and the rights of ownership of the work. It is therefore imperative to keep proper records surrounding the creation, updating or acquisition of any copyright work. The registration of a cinematograph film serves to alleviate the burden of proof of rights.



TIP

When commissioning the creation of a work, for example, the design of any logo, advertising material, or creation of a website, be sure to enter into a written agreement assigning the copyright in the commissioned work to you. Also check your contracts of employment to clearly identify the course and scope of employment and in what capacity the employee created the work.

- **Duration of copyright:** In South Africa, the duration of copyright is determined based on the type of work. Literary, artistic, and musical works are protected for the lifetime of the author plus 50 years from the end of the year in which the author dies. In the case of other works, 50 years after the work is made available to the public, published, or made. In the case of State works, 50 years from the end of the year, the work was first published. Under the Berne Convention, 50 years are the minimum, although in some jurisdictions like the United States and the European Union it is 70 years.
- **Rights granted by copyright:**
 - **Economic rights:** Copyright grants the owner the exclusive right to do or authorise others to perform restricted acts, which primarily relate to the reproduction or adaptation of the work. The Copyright Act details a list of restricted acts in respect of each category of work, which falls within the monopoly of the copyright owner and generally relating to copying the work in one form or another or exploiting the work for commercial gain.
 - **Moral rights:** The author retains the rights of paternity (the right to claim authorship of the work), and right of integrity (to object to the distortion, mutilation, or modification of the work), where it is prejudicial to the reputation of the author, even when the author does not own the copyright in the work created.

**TIP**

The mere fact that copyright works may be freely available for download does not mean that they can be used or copied. Any use or copying of the substantial part (quality not quantity) of the work without the consent and authority of the copyright owner infringes copyright and may result in the commission of an offence.



- **Transfer of copyright:** Copyright is a form of movable property and must be assigned in writing, licensed, transmitted by will or testament, or by operation of law.
- **Neighbouring rights - performers' protection rights:** Neighbouring rights, specifically performers' protection rights, are governed by copyright laws and the Performers' Protection Act 11, of 1967. This Act regulates the rights of performers, producers, and broadcasters, offering protection for the performances of literary, musical, and artistic works.

**TIP**

Assignment of copyright must be in writing and signed on behalf of the Assignor. The work being assigned must be clearly identified in the assignment agreement.

In 2002, the Performers' Protection Act and the Copyright Act were amended to introduce a performing right for copyright owners of sound recordings and performers, commonly referred to as 'Needletime rights.' These amendments also included a definition for collecting societies, which are established under the Copyright Act to collect royalties for Needletime rights.

Additionally, the amendments provided for the creation of regulations to oversee the establishment of collecting societies, ensuring they meet the collection and distribution demands arising from Needletime rights, are outlined in the Collecting Societies Regulations of 2006.

- **Needletime royalties:** Royalties paid to artists and record companies for the copyright license to play sound recordings in public.

- 
- **Needletime collection societies:** There are two approved collecting societies in South Africa, regulated by the CIPC Copyright Tribunal, that collect Needletime royalties on behalf of its members:

- **South African Music Performance Rights Association (SAMPRO):**
Administers Needletime rights on behalf of record labels and recording artists. SAMPRO licenses recorded music for public performance and broadcast.
- **Independent Music Performance Rights Associations (IMPRA):**
Is an artists' royalty collecting society.

- **Associations and organisation** which aim to promote and protect copyright and co-ordinate industry representation, and other membership-based collection societies which manage the collection of royalties on behalf of their members for different types of works include:

- **Publishers' Association of South Africa (PASA):** Focused on the promotion and protection of rights and responsibilities of the independent publishers' sector in South Africa.
- **Music Publishers' Association of South Africa (MPASA):** Create value by safeguarding and championing the copyright of members focused on business upskilling, networking, education, and awareness.
- **Writer's Guild of South Africa (WGSA):** Aims to be a support system for the South African performance writer in local film, television, radio, stage, animation, and new media (internet–mobile and digital distribution, and gaming).
- **Recording Industry of South Africa (RISA):** RISA is a trade association representing the collective interest of producers of music sounds recordings and major independent recordal labels in South Africa.
- **South African Music Rights Organisation (SAMRO):** The primary role of SAMRO is to administer performing rights on behalf of its members by licensing music users, through the collection of license fees which are then distributed as royalties.
- **Dramatic, Artistic and Literary Rights Organisation (DALRO):** Licensing the use of published dramatic, artistic, and literary copyrighted works and distributing royalties.
- **Composers, Authors and Publishers Association (CAPASSO):** Digital Rights Licensing Agency, which collects and distributes royalties to its members (music publishers and composers).

- **The Copyright Amendment Bill (CAB) and Performers' Protection Amendment Bill (PPAB):** The CAB is aimed at updating the Copyright Act to make it more effective for educators, researchers, artists, and people with disabilities. The PPAB seeks to protect performers' moral and economic rights, as well as the rights of producers of sound recordings. On 29 February 2024, both houses of the National Assembly approved these bills, which have been forwarded to the President for assent.

3. REGISTERED DESIGNS

The protection of designs in South Africa is governed by the Designs Act, 195 of 1993 and the Designs Regulations, 1999, which allows for eligible works to be registered with the CIPC. A registered design provides the proprietor with a limited duration monopoly and is enforceable to prevent third parties from making the design.

A design protects the look or appearance of an article, and not the underlying concept or idea (which is protected as an invention under patents). There are two types of designs that you can register in South Africa,¹⁶:



AESTHETIC DESIGN

protecting the visual features that appeal to, and are judged solely by the eye, including the shape, ornamentation, configuration, pattern, or a combination of these elements.

E.g., the unique shape of a perfume bottle.

Protected for 15 years



FUNCTIONAL DESIGN

protecting the features that are necessitated by the function of the article to which the design is applied, including pattern, shape, configuration, or combination of these elements.

E.g., a nozzle used on a bottle for dispensing the liquid.

Protected for 10 years

¹⁶ CIPC Register Design: https://www.cipc.co.za/?page_id=4351

■ **Requirements for registration:**

- **New:** An aesthetic design is required to be new and original (it must look different from any existing articles), and a functional design must be new and not commonplace in the art (it must look different and not be obvious in the industry).
- **Production:** The article must be made by an industrial process. Handcrafted items and works of art are generally excluded.
- **Release date:** An application for a registered design must be filed within six months of public disclosure. This “grace period” cannot be extended.
- **Spare parts excluded:** A functional design cannot be filed for a spare part of a machine, vehicle, or equipment.



Keep the design confidential and do not market or sell the product until a design application has been filed. While there are some other jurisdictions that also have a grace period (six to 12 months), you may exclude your options to file in foreign countries where you use or disclose the design before filing in South Africa.

- **Classification of designs:** The Designs Register is divided into 32 classes and the registered design only provides protection in the class it is registered. The same design may, however be filed in more than one class.¹⁷
- **Design specification:** A design application primarily includes:
 - a set of representations which illustrate the article to which the design is applied;
 - a “Definitive Statement” setting out the features of the design for which protection is claimed (defining the scope of the protection along with the representations);
 - an “Explanatory Statement” which can be used to described what the article is and how it works or is constructed (this is optional except for integrated circuit layout or mask works); and
 - a “Brief Statement of Features” which is published with one of the representations to explain what the design relates to.
- **Representations:** These are commonly drawings but may also be photographs. The representations must properly depict the features of the design as it is applied to the article which is being protected.
- **Ownership:** The application for registration must be filed by the owner of a design (the proprietor). The proprietor is either: the author of the design; a person who has caused a work to be created by another person; an employer where the work is created in the course and scope of employment by an employee; or a person to whom ownership has passed by assignment.



TIP

Design applications are examined only for compliance with formal requirements and there is no assessment as to novelty. It is recommended to conduct a search to assess novelty and uniqueness of a specific design before filing. A basic or advanced search can be conducted through the Register. An advanced search carries an additional cost.

¹⁷ South Africa follows the Lacarno Classification: WIPO link to classes accessed at: https://www.wipo.int/export/sites/www/classifications/locarno/en/pdf/loc_9.pdf

- **Design registration process:**



- **Renewal:** Registered designs must be renewed annually starting at the expiry of the third year calculated from the earlier of the date of lodgement, a priority date or a release date (as the case may be). The design will lapse if a renewal fee is not paid within a six month extension period after the renewal due date.¹⁸
- **Term of protection:** An aesthetic design has a duration of 15 years, and a functional design has a duration of 10 years. The terms of protection cannot be extended.
- **Foreign country/region design filings:** South Africa is a member of the Paris Convention, which allows an applicant of a South African design to file foreign design applications in a country or region within six months of the local filing date.

¹⁸ CIPC Maintain Design: https://www.cipc.co.za/?page_id=4440

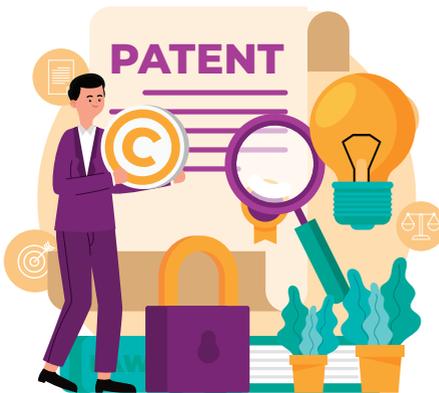
4. PATENTS

Patents in South Africa are governed by the Patents Act, 57 of 1978 and accompanying Patent Regulations, which provide details of:

- the requirements for a patentable invention;
- what subject matter is excluded from being patented;
- the application and grant process, renewals and duration;
- infringement and invalidity of patents; and
- the available mechanisms for enforcement and revocation of a patent using court proceedings.

An inventor may apply for a patent as the applicant, or the invention may be transferred/assigned by the inventor to another party who can then apply as the applicant.

The property right granted to the applicant provides exclusive rights to use and exercise the invention for the duration of the patent. These rights are granted in exchange for a comprehensive disclosure of the invention in a patent specification. By registering a patent, the applicant has the right to stop unauthorised third parties from making or using the invention. The applicant can sell the patent to another person or company¹⁹.



¹⁹ CIPC Register Patents; https://www.cipc.co.za/?page_id=4184

- **Invention requirements:** The invention must be new or novel (i.e. not previously disclosed and different from that which is published or known, anywhere in the world), it must involve an inventive step (i.e. not obvious when compared to existing products, knowledge and technology), and it must be useful or applicable in trade, industry, or agriculture.

NOVELTY

conduct “prior art” search for absolute novelty (disclosure anywhere in the world destroys novelty)

INVENTIVE

not obvious to a person in the field or industry

USEFUL

have a practical application in the field or industry

An illustration showing a blue folder with documents inside, placed on a light blue circular base. Above the folder is an orange box with the text "Valid patent granted". The scene is surrounded by decorative elements like stars and document icons.

Valid patent granted



TIP

Keep your invention confidential until you have filed a patent application. Once an invention is disclosed by an inventor to the public or used commercially it is no longer novel. Novelty is assessed by carrying out “prior art” searches of existing patents and publications– both locally and internationally. It is advisable that the applicant seek the services of a patent attorney in this regard.

- **What cannot be patented:** A discovery; a scientific theory; a mathematical method; a literary, dramatic, musical, or artistic work, or other aesthetic creation; a scheme, rule, or method for performing a mental act, playing a game, or doing business; a programme for a computer; or the presentation of information.²⁰
- **The inventor and ownership:** The 'inventor' is the person(s) who came up with an invention and must always be listed when filing a patent application.

The applicant (owner) of the patent must also be identified. The owner of the rights in an invention can be the inventor or any person acquiring the rights to the invention from the inventor. These rights can be acquired by agreement (for example, an employment agreement) or by deed of assignment.



TIP

Ensure all inventors are named in the patent application and that the appropriate document showing the applicant's entitlement, where there has been a transfer, is submitted in support of the application. A patent can be revoked where there has been a misrepresentation regarding the identity of inventors.

- **Patent specification:** This is a technical and legal document which is drafted to protect an invention. The patent specification is normally accompanied by drawings which help to explain the invention.

²⁰ Section 25 of Patents Act defines the scope of patentable inventions and exclusions

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- **Registration process:** The South African Patents Act, provides for a two-stage filing procedure: (a) An initial provisional patent application can be filed to obtain an official number with a filing date to cover the invention for disclosure/commercialisation by the applicant; and (b) This is followed by a complete patent application which is required to obtain granted rights.
 - **Provisional patent application:** Individuals may draft and file their own provisional patent applications. (It is advisable, however, to seek the assistance of a patent attorney, especially where the invention may have significant commercial value). A provisional specification must fairly describe the invention. The provisional patent application provides the applicant 12 months to develop, improve or market the invention. This is useful where an invention is still in either the conceptual or development phase. The provisional patent application is not open to public inspection.
 - **Complete patent application:** A complete specification must describe the invention in detail and set out a list of claims which define the scope of protection sought under the patent. The complete patent application must be drafted and filed by a patent attorney. This step must be taken within 12 months of filing the provisional patent application, to avoid the provisional patent application lapsing.

The main options for completion of a provisional patent application are as follows:

- **South African complete patent application:** This local filing will secure patent rights in South Africa only; or
 - **PCT (Patent Co-operation Treaty) international patent application:** This filing is administered by the World Intellectual Property Organisation (WIPO) and covers 158 PCT contracting states²¹ including South Africa. Some of the PCT states are grouped into regions for the purposes of patent protection. The PCT application provides an additional 18 months after which separate filings must be entered into each country or region where protection is required.
- **Foreign country/region patent filings:** In addition to the local and international filing options (mentioned above), a complete patent application can also be filed directly into a foreign jurisdiction where protection is required. This will primarily be done by claiming priority under the Paris Convention.

²¹At the time this was written.
See https://www.wipo.int/pct/en/pct_contracting_states.html


TIP

A patent application can only cover that which is disclosed in the accompanying specification. If any developments or modifications go beyond what is covered in an initial document, a second filing will be necessary if those changes are to form part of the subject matter for which protection is sought.

- **Renewal:** To maintain a patent, annual renewal fees are payable from the third anniversary of the filing date. The patent will lapse if a renewal fee is not paid within a six-month extension period after the renewal due date.
- **Term of protection:** South African patents have a duration of 20 years, which cannot be extended.


TIP

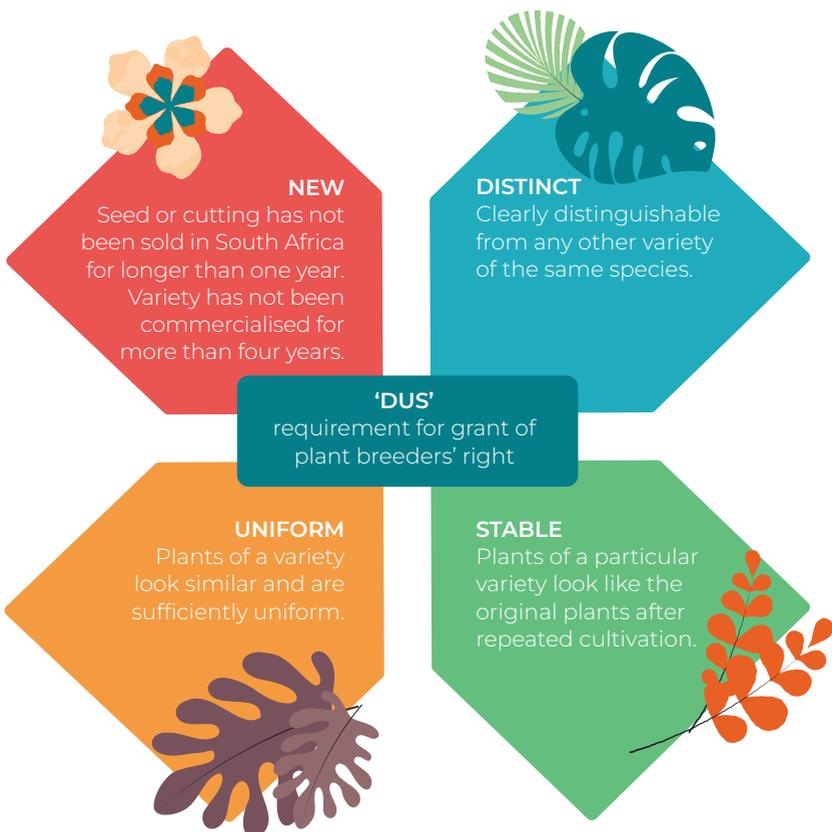
Be sure to take steps to avoid infringing an existing patent: check necessary patent database(s) for the relevant patents; review the claims; and modify your product accordingly. Your product cannot use the same combination of features that are covered by the claims of an existing patent. Adding features will not prevent infringement. To avoid infringement, you must leave out one or more features of the patent claim. A patent attorney can assist with the searching and/or advice on these issues.

5. PLANT BREEDERS' RIGHTS

Plant breeders' rights (plant variety rights) are rights granted, in terms of the [Plant Breeders' Rights Act](#) of 1976, to breeders of new plant varieties for protection of their varieties against exploitation and to obtain financial rewards for their efforts. With these rights, the breeder can choose to become the exclusive marketer of the variety or to license the variety to others.

Sole right period: The PBR Act makes provision for a sole right period of either five years for annual crops or eight years for perennial crops (fruit and vines) during which a breeder does not have to issue licenses if he/she does not want to, to ensure a return on investment. After the expiry of the sole right period, the applicant must issue licenses on request.

- **Requirements for the granting of plant breeders' rights:** Plant varieties must have an acceptable variety name and meet the "DUS" (Distinct, Uniform and Stable) requirement:



- **Registration process:**²² An application for registration is filed with the Registrar for Plant Breeders' Rights, which is assessed, and will require samples of the plants for testing:
 - **Applicant:** Any individual breeder or breeding institution may apply for plant breeders' rights and/or variety listing. Foreign breeders may only apply through an agent residing in South Africa.
 - **Varieties:** Only granted for varieties of plants declared in terms of the Act.²³ Hemp is now classified as an agricultural crop and protected in the same way as other plant varieties.²⁴
 - **Provisional protection:** Available for the duration of the evaluation period, provided that the applicant provides a written undertaking not to sell the varieties until all tests are completed and rights granted. (Recommended for crops where tests take longer than one year).
- **Registration, renewal and duration:** Plant breeders' rights are valid for 20 years (annual crops) or 25 years (vines and trees) from the date the PBR was issued.



- **The International Union for the Protection of New Varieties of Plants (UPOV):** South Africa is a member country of UPOV. UPOV's mission is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society. South Africa's plant variety protection system is aligned with the UPOV 1978 convention. The UPOV convention has however been revised three times, with the latest revision in 1991. The alignment with the revised versions would provide for stronger plant breeder's rights in South Africa.²⁵

The new PBR Act 12 of 2018, coming into force in 2025, is aligned to the 1991 Convention.

²² Apply for plant breeders' rights accessed at <https://www.gov.za/services/plant-production/plant-breeders-rights>

²³ Listed in Table 1 of the Regulations. A list of plants is available from the Department of Agriculture, Land Reform and Rural Development (DALRRD) on request and covers 250 types.

²⁴ Plant Improvement Act 53 of 1976: Guidelines for Hemp for Cultivation for Agricultural and Industrial Purposes: <http://www.daff.gov.za/images/Quick%20links/HempCannabis/Guidelines/HP-GD-001%20Guidelines%20for%20Hemp%20002.pdf>

²⁵ <https://www.upov.int/portal/index.html.en>



6. COMMON LAW RIGHTS, COMPANY NAMES AND TRADE SECRETS

6.1 Common law IPRs

Common law rights are established through the actual use of the trade mark in trade, resulting in the building of a reputation and goodwill associated with the trade mark. South Africa is a '*first to use*' country, which recognises an unregistered brand being used as a trade mark, and the person or business using the trade mark in commerce first will receive rights in the IP. Unregistered trade marks are afforded protection and can be enforced under the common law principle of "passing off" as well as unlawful competition.

The proof and enforcement of a common law trade mark is more difficult than relying on the statutory rights acquired through registration of a trade mark, because of the evidence required to establish the elements of "passing off" or unlawful competition.

- **Passing off** requires the following elements to be proven:
 - Goodwill and reputation in the business and acquired common law rights in the mark forming part of the get-up of the product, also known as trade dress, being the visual appearance of the product which identifies the source and distinguishes it from others.
 - Misrepresentation (direct or indirect) that is likely to confuse the public that the goods or services of the trader are associated with another person or entity.
 - The misrepresentation is causing damage or likely to cause damage to the goodwill or reputation of the business.
- **Protection of unregistered well-known trade marks** is provided under Section 35 of the Trade Marks Act, as detailed above in Section 1, covering trade marks.
- **TM symbol:** May be used with an unregistered mark to provide notice to potential infringers that rights in the mark are claimed in connection with specific goods or services. As mentioned, the ® symbol can only be used in respect of a registered trade mark.

6.2 Company names

The Companies Act 71 of 2008 (as amended) prohibits the registration of a company with the name which is the same or confusingly similar to another company name, a registered trade mark, a reserved company name, defensive company name or a well-known trade mark.

- **Company name searches:** Although the Registrar of Companies conducts an assessment of the companies register when approving a name, no search is conducted of the Trade Marks register. It is recommended that you conduct a trade mark search before registering your company name, to avoid a possible company name objection. An objection is then assessed by the Companies Tribunal, which, if successful, will result in you losing your company name.
- **Defensive company name:** It is possible to register a defensive company name for a period of two years, which may be renewed for a further two-year period. It is required that you show a direct and material interest in the protection of the name. Transfer of a defensive name must be accompanied by satisfactory evidence that the transferee has a direct material interest in the name.

6.3 Trade secrets

Trade secrets or confidential commercial information includes 'know-how,' formulas, practices, processes, designs, recipes, or compilations of information, and customer lists, which are used to gain a competitive advantage in the industry or trade. They are not registered rights and therefore have no time limit to their protection, provided they are kept secret.

- **Unauthorised disclosure of trade secrets** results in an act of unfair competition. The Trips Agreement²⁶ provides that member states shall protect '*undisclosed information*' against unauthorised use (*'a manner contrary to commercial practices'*) so long as the information:
 - is secret in the sense that it is not generally known or readily accessible to persons who normally deal with this kind of information;
 - it has commercial value because it is secret; and
 - reasonable steps have been taken to keep it safe.
- **Protection of trade secrets:** It is important to identify trade secrets and ensure that confidential information is stored securely with limited access, ensuring confidentiality, and that non-disclosure agreements are in place.

TIP



Ensure that employment and service contracts include confidentiality/non-disclosure agreements. Furthermore, ensure that any restraint of trade clauses included in any contracts or agreements contain a duty not to disclose trade secrets and confidential information.

²⁶Article 39



7. INDIGENOUS KNOWLEDGE SYSTEMS (IKS)

Before proceeding to Section 8 (Geographical Indications) and Section 9 (Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE)), it is important to appreciate the use of terminology.

- **South Africa:** When one refers to IKS as a collective term, it comprises knowledge about the traditional use of various biological and other materials for medicinal treatments, agriculture, production processes, functional and aesthetic designs, literature, music, rituals, folklore, handicrafts, and other techniques and arts by Indigenous peoples and local communities (IPLC). IKS are also said to be the intangible cultural value of a group or community, such as local knowledge instead of what may be termed global knowledge.
- **WIPO:** Does not use the term IKS as such. Yet, the WIPO Intergovernmental Committee (IGC) deals with three related subjects, namely Genetic Resources (GR), Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE). This differential is extremely helpful when IKS is referred to within the context of international instruments such as the Paris Convention (industrial property), Berne Convention (copyright) and the Convention on Biological Diversity (genetic resources and associated traditional knowledge).

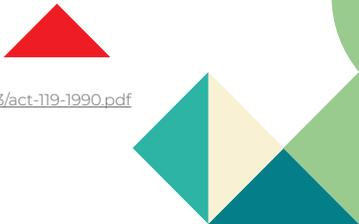


8. GEOGRAPHICAL INDICATIONS (GIs)

GIs: Names or signs used on products (agricultural products, wines and spirits) with a specific geographical location or origin, having a quality and reputation linked to this geographical origin. GIs provide a collective right to use the GI, provided the products are produced in that area and produced according to the required standards (Code of Practice and specifications). South African GIs include 'Honeybush' (Eastern Cape & Western Cape), 'Rooibos' (Cederberg), 'Karoo lamb' (Karoo Region).

South Africa GIs: Are not covered in any single legislation, but protection is provided through various legislative measures, such as the Agricultural Products Standards Act, 119 of 1990 (APSA) and the GI Regulations as well as through free-trade agreements or other agreements.

- **Agricultural Products Standards Act, 119 of 1990 (APSA) and the GI Regulations:** Allows for the registration and protection of South African and foreign GIs, including EU GIs for agricultural products. 'Karoo Lamb/Karoo Lam' was the first GI registered in South Africa under this Act.²⁷



²⁷ APSA, 119 of 1990 link: https://www.gov.za/sites/default/files/gcis_document/201503/act-119-1990.pdf

- **GI registration:** Provides the users within a specific geographical area with the collective right to use the GI on their products originating from that area, provided the products are produced according to the specific requirements and standards associated with the GI registration. The users can also prevent other non-qualifying producers from using the GI.²⁸
- **GI Regulations:** Provide the rules for the application for registration as a South African GI and set out the procedure for the assessment of applications (including priority and objections), and provide practice rules for labelling of foodstuffs using registered geographical indications as ingredients.
- **Requirements for registration:** There are three elements required to be present:²⁹



- **GI validity period:** GIs are valid for an indefinite period until the registration is cancelled. This differs from other IPRs, such as trade marks, which are valid for a 10-year period, although can be renewed on application.
- **Labelling of foodstuffs using registered geographical indications as ingredients:** A name registered as a South African GI or foreign GI, including those protected under free trade agreements (FTAs), may be used as part of or near the product name, such as on labels or in advertisements. However, this usage is subject to strict requirements outlined in the GI regulations.
- **Liquor Products Acts, 60 of 1989 (LPA):** The Minister of Agriculture can restrict the use of geographical names relating to the sale and export of liquor products. EU GIs are protected under this Act, as published in the government gazette. See Notice [R40382](#) of 28 October 2016 and Notice [R4536](#) of 22 March 2024.³⁰

²⁸ GI Regulations link: https://www.gov.za/sites/default/files/gcis_document/201903/42324rg10925aon447.pdf.

²⁹ Section 17 of the GI regulations

³⁰ General Notices No. 40382 Prohibition of the Use of GIs of the EU in connection with the sale of Liquor Products: https://www.gov.za/sites/default/files/gcis_document/201610/40382gen722.pdf

- **Trade Marks Act, 194 of 1993 (TMA):** As mentioned in Section 1 above, the Act provides for the registration of a GI in the form of a collective or certification mark.



TIP

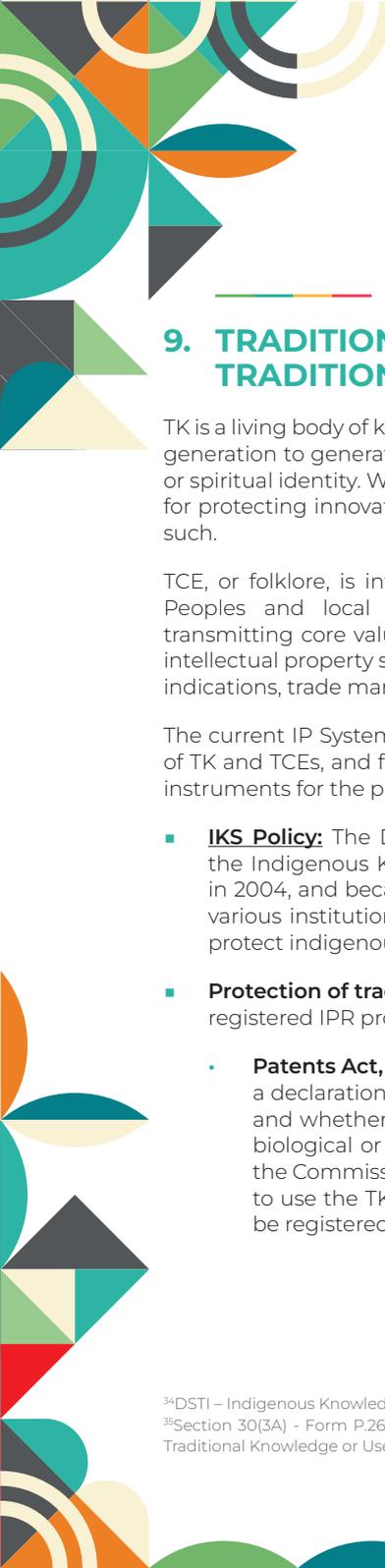
The Department of Agriculture, Land Reform and Rural Development (DALRRD) enforces compliance with APSA and the GI Regulations as well as the LPA. In both cases the unauthorised use of GIs constitutes an offence, in which rights are enforceable by the holder of the right. The dtic administers and enforces non-compliance with the provisions of the MMA (prohibited marks). Furthermore, the improper use of prohibited marks, collective and certification marks registered as a trade mark, may also constitute an act of counterfeiting and constitutes an offence, enforceable by the IPR holder.

- **GI protection by agreement:** South Africa has entered into several FTAs or economic partnership agreements (EPAs) with other countries to protect GIs, including:
 - **SADC-EU EPA:** Protecting GIs bilaterally between South Africa and the EU, listing protected GIs in Annex 1 of Protocol 3 on GIs and trade in wine and spirits between South Africa and the EU, from misuse, imitation, and commercial use. South Africa protects 251 EU GIs covering food (e.g. meats, cheeses, fruit, vegetables, olive oil), wines and spirits and the EU protects 105 GIs names from South Africa, which are all listed in Annexure 1 of Protocol 3.³¹
 - **SACUM-UK EPA:** Free trade agreement between SACU members, as well as Mozambique with the UK, and includes an agreement to protect GIs for food, drink, and agricultural products.³²
 - **Bilateral Agreement on Trade in Wines and Spirits:** Protecting EU GI names for certain wines and spirits in South Africa.
- **Protecting GIs abroad:** GI rights are territorial and are limited to the country or region where the protection is granted. GIs can be protected internationally, either on a national (each country separately), regional (E.g. OAPI, ARIPO) or international (WIPO Lisbon system) basis.³³

³¹ Protocol 3- Trade in wines & spirits: <https://www.bitc.co.bw/media/pdf/trade-agreements/SADC-EU-EPA-2016/TRADE-IN-WINES-AND-SPIRITS.pdf>

³² Overview of SACUM-UK EPA: <https://www.dalrrd.gov.za/images/Branches/Economica%20Development%20Trade%20and%20Marketing/international-trade-and-promotions/trade-facilitation/information-packs-18-august-2021/sacum-uk-epa.pdf>

³³ Lisbon Agreement: <https://www.wipo.int/treaties/en/registration/lisbon/>



9. TRADITIONAL KNOWLEDGE (TK) AND TRADITIONAL CULTURAL EXPRESSIONS (TCE)

TK is 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. While the current international patent system is appropriate for protecting innovations based on TK, it does not provide protection for TK as such.

TCE, or folklore, is integral to the cultural and social identities of Indigenous Peoples and local communities, embodying know-how and skills, and transmitting core values and beliefs. Various TCE can be protected by existing intellectual property systems, such as copyright and related rights, geographical indications, trade marks, and designs.

The current IP Systems have some limitations when it comes to the protection of TK and TCEs, and for this reason WIPO is working on new international legal instruments for the protection of TK and TCEs.

- **IKS Policy:** The Department of Science and Technology (DST) developed the Indigenous Knowledge Systems (IKS) Policy, which was then adopted in 2004, and became the first important milestone in the establishment of various institutional structures to recognise, affirm, develop, promote, and protect indigenous knowledge.³⁴
- **Protection of traditional knowledge:** Is not provided in the form of a single registered IPR protection measure, although included in IP legislation:
 - **Patents Act, 57 of 1978:** The applicant for a patent is required to include a declaration of whether the patent is derived from TK or the use of TK, and whether the invention is based on or derived from an indigenous biological or genetic resource. If declared to derive from TK or its use, the Commissioner of Patents must call for proof of the applicant's rights to use the TK. In absence of such proof, the patent application will not be registered.³⁵

³⁴DSTI – Indigenous Knowledge Systemes: https://www.dsti.gov.za/images/pdfs/IKS_Policy%20PDF.pdf

³⁵Section 30(3A) - Form P.26 Statement of the Use of Indigenous Biological Resource, Genetic Resource Traditional Knowledge or Use

- **Intellectual Property Law Amendment Act, 28 of 2013 (IPLAA):** Provides for the protection of certain types of Indigenous knowledge as a species of intellectual property rights and amends the following Acts to include certain forms of IKS protection:
 - **Copyright Act:** To provide for the recognition and protection of indigenous works;
 - **Performers' Protection Act:** To provide for the recognition and protection of performances of traditional works;
 - **Trade Mark Act:** To provide for the recognition of indigenous terms and expressions and for the registration; and
 - **Designs Act:** To provide for the recognition and registration of indigenous designs.

IPLAA further provides for the future establishment and functions of a National Council for Indigenous knowledge, the establishment of a National Database for the recording of IKS, (kept at the offices of the registrars of patents, copyright, trade marks and designs as part of the existing IP registers), and a National Trust and Fund (for the collection of funds and applied for the benefit of indigenous communities). IPLAA has not come into effect and is awaiting the drafting of regulations.

Note: In 2013, the President assented to IPLAA. It will come into operation on a date to be fixed by the President by proclamation in the Government Gazette. This will take place after the necessary regulations have been drafted and approved.

- **Protection, Promotion, Development and Management of Indigenous Knowledge Act, 2019 (IK Act):** The primary objective of the Act is to protect the Indigenous knowledge of Indigenous communities from unauthorised use, misappropriation, and misuse, and to regulate the fair and equitable distribution of benefits from its commercial use through the establishment of the National Indigenous Systems Office (NIKSO).

NOTE



In 2019, the President assented to the IK Act. It will come into operation on a date to be fixed by the President by proclamation in the Government Gazette. This will happen once the necessary regulations have been drafted and approved.

• **The National Indigenous Knowledge Systems Office (NIKSO):** Office within the Department of Science & Technology (DST), established by the IK Act, fulfilling the functions and duties stipulated in the Act, namely the promotion, protection, and development of IKS in South Africa. The NIKSO portal (formally known as NIKMAS) is the IK Registration System that is connected to the IKS documentation centres that support communities to record their Indigenous knowledge. Accessing these through the IK Registration System requires permission and authorisation. Future systems that will be available via the NIKSO Portal include the IK Register of Designations.

NOTE

The IK Act is still to come into effect, and it is likely the regulations will be drafted together with the Regulations of IPLAA.

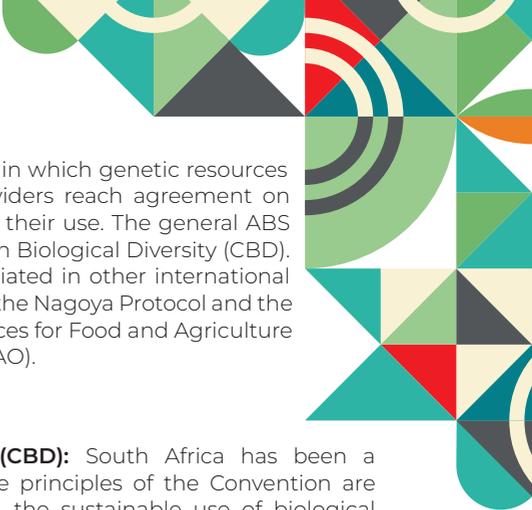


10. BIODIVERSITY AND ACCESS AND BENEFIT SHARING (ABS)

Biodiversity: (biological diversity): In terms of Article 2 of the Convention on Biological Diversity (CBD), “Biological diversity” means *the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.*

Biodiversity economy: Includes the business and economic activities that either directly depend on biodiversity for their core business or that contribute to the conservation of biodiversity through their activities, which includes the bioprospecting sub-sector.

Bioprospecting: Includes individuals and organisations that search for, collect, harvest, and extract living or dead indigenous species or derivatives, and genetic material for commercial and industrial purposes.



Access and benefit sharing (ABS): The way in which genetic resources may be accessed, and how users and providers reach agreement on the fair sharing of benefits that results from their use. The general ABS principles are contained in the Convention on Biological Diversity (CBD). They are also included and further substantiated in other international agreements and instruments, particularly in the Nagoya Protocol and the International Treaty on Plant Genetic Resources for Food and Agriculture by the Food and Agriculture Organization (FAO).

International convention and protocol:

- **Convention on Biological Diversity (CBD):** South Africa has been a party to the (CBD) since 1995. The core principles of the Convention are the conservation of biological diversity, the sustainable use of biological resources, and fair and equitable sharing of benefits arising from the use of genetic resources. It also provides a comprehensive global strategy focused on promoting sustainable development, the ecosystem approach, and the emphasis on building partnerships that are all helping to shape global action on biodiversity.³⁶
- **Nagoya Protocol:** In 2010, the CBD adopted the Nagoya Protocol³⁷, a supplementary agreement to the Convention on Biological Diversity. It provides a transparent legal framework for the effective implementation of one of the three objectives of the CBD: the fair and equitable sharing of benefits arising from the utilisation of genetic resources, thereby contributing to the conservation and sustainable use of biodiversity. The Nagoya Protocol will create greater legal certainty and transparency for both providers and users of genetic resources by:
 - establishing more predictable conditions for access to genetic resources; and
 - helping to ensure benefit-sharing when genetic resources leave the country providing the genetic resources.

By helping to ensure benefit-sharing, the Nagoya Protocol creates incentives to conserve and sustainably use genetic resources, and therefore enhances the contribution of biodiversity to development and human well-being.

The Protocol sets out core obligations for its contracting parties when taking measures for regulating access to genetic resources, benefit-sharing, and compliance.³⁸

³⁶ CBD website: <https://www.cbd.int/intro>

³⁷ Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity

³⁸ CBD- Nagoya Protocol: <https://www.cbd.int/abs/default.shtml>

- **WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge:** In May 2024, WIPO member states (including South Africa) adopted a new WIPO Treaty to address the interface between intellectual property, genetic resources and traditional knowledge. It is also the first WIPO treaty to include provisions specifically for Indigenous People as well as local communities. In particular, it contains provisions regarding the disclosure of origin/source of genetic resource and associated traditional knowledge in patent applications, but it does not contain provisions on ABS as such. The WIPO Treaty is not yet in force. It will enter into force after 15 ratifications or accessions.
- **ABSCH ABS Clearing-House:** A platform for sharing information on ABS established by the Nagoya Protocol, as part of the clearing-house mechanism under the CBD. The ABSCH is a key tool for implementation of the Nagoya Protocol and provides users access to genetic resources and associated TK, and providers fairly and equitably shares in the benefits from their utilisation.³⁹



³⁹ CBD- ABSCH link: <https://www.cbd.int/abs/theabsch.shtml>

- South Africa joined the **International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)** in January 2025. The ITPGRFA is administered by the Food and Agricultural Organisation of the United Nations (FAO). The objectives of the FAO are the conservation and sustainable use of all plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the CBD.⁴⁰
- **South Africa legislation and regulations:** South Africa has adopted and is currently implementing the Nagoya Protocol through current legislation and regulations for biodiversity and ABS, including:
 - **National Environmental Management Biodiversity Act, 10 of 2004 (NEMBA):** Regulates the commercial exploitation of indigenous biological resources and genetic materials for value; and
 - **Bioprospecting, Access and Benefit Sharing Regulations of 2008 (BABS):**⁴¹ Governs the discovery and commercialisation phases of bioprospecting projects, and set out the form and content of, and requirements and criteria for benefit-sharing and material transfer agreements and the administration process of the Bioprospecting Trust Fund.
- **Biodiversity Bill:** The draft National Environmental Management: Biodiversity Bill was approved by Cabinet and published for comment in 2024.

The proposed amendments to NEMBA include a revised and more flexible regulatory approach, inclusion of additional provisions relating to the listing of species and ecosystems, implementation of international agreements, wildlife tracking, a complete revision of the provisions relating to bioprospecting and ABS and provide stricter penalties for offences committed by State Officials.

Once enacted, the Bill will repeal NEMBA, although it contains transitional arrangements to facilitate the smooth transition from the NEMBA provisions to the new measures.⁴²

⁴⁰ FAQ link: <https://www.fao.org/plant-treaty/news/news-detail/r/c/1732183/#:~:text=16%20January%202025%2C%20Rome%2C%20Italy,Party%20to%20the%20International%20Treaty>

⁴¹ DFFE BABS link: <https://www.dffe.gov.za/access-and-benefit-sharing-babs-clearing-house-republic-south-africa>

⁴² DFFE Bill link: https://www.dffe.gov.za/legislation/gazetted_notices/draft2024nem.biodiversitybill

- **DEA: The Department of Environmental Affairs** acts as the clearing house and focal point for ABS in South Africa and administers NEMBA and BABS. The DEA is actively involved in capacity building and raising awareness of the regulatory requirements relating to biodiversity and ABS.
- **DEA Guidelines:** Guidelines developed by the DEA to assist stakeholders to understanding the legal requirements and their rights and are to be consulted when planning to engage in commercial bioprospecting, including the requirements for securing of required permits.⁴³
- **Permits:** NEMBA and BABS set out important requirements for those using indigenous biological resources, and a permit is required for:
 - anyone carrying out bioprospecting involving indigenous biological resources and, if applicable, associated traditional use or knowledge; and
 - anyone exporting indigenous biological resources for the purposes of bioprospecting, or other research, requires a permit.

A permit will only be issued if there is material disclosure to stakeholders, if their prior informed consent to the bioprospecting has been obtained, and if the Minister of Water and Environmental Affairs is satisfied that certain conditions, as set out in the legislation, have been met.

Two categories of such stakeholders are those who gave access to the indigenous biological resources (e.g. land owner), and indigenous communities whose knowledge or traditional use of indigenous biological resources has contributed to, or may contribute to, the bioprospecting. Benefit-sharing agreements must be entered into with stakeholders, and, in addition, a material transfer agreement must be entered into with stakeholders who give access to the indigenous biological resources.



TIP

The DEA guide assists in completing Bioprospecting permit applications and a benefit-sharing agreement template is included in the BABS Regulations (Appendix 3).

⁴³ DFFE ABS link: https://www.dffe.gov.za/sites/default/files/legislations/bioprospecting_regulatory_frameworkguideline.pdf

BioTrade value chains: Biodiversity is the foundation for BioTrade value chains. ABS helps to ensure that value chains contribute to conservation and sustainable use of biodiversity. The Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ) manages three projects of relevance to South Africa,⁴⁴ namely the ABS Initiative (South Africa - partner country since 2015)⁴⁵, ABioSA (South Africa - focal intervention country February 2018 – December 2024)⁴⁶, and BioInnovation Africa (South Africa - July 2019 to December 2025)⁴⁷.

Africa BioTrade value chains:⁴⁸

BIOTRADE VALUE CHAINS SUPPORTED BY ABIOSA PHASE II	VALUE CHAINS SUPPORTED BY ABIOSA AND THE BIOINNOVATION AFRICA PROJECT	MORE VALUE CHAINS SUPPORTED BY BIOINNOVATION AFRICA PROJECT
<ul style="list-style-type: none"> ■ Baobab ■ Marula ■ Buchu ■ Honeybush ■ <i>Sceletium Tortuosum</i> 	<ul style="list-style-type: none"> ■ Marula ■ Buchu ■ Honeybush 	<ul style="list-style-type: none"> ■ Mondia (Africa Ginger) ■ Aiden tree ■ Bees wax ■ Indian pennywort ■ Ylang Ylang ■ Rooibos ■ Devil's claw ■ SilverCluster-leaf ■ Ravintsara ■ Mopane ■ Namibian Myrrh ■ Saro & Manketti

■ **The Rooibos ABS Agreement:**

Recognises the Khoikhoi and San people as the traditional knowledge holders to the use of Rooibos, found only in the Cedarberg region of South Africa, in terms of the Agreement concluded on 25 May 2019. The ABS agreement launched between the parties now brings the South African Rooibos Industry into compliance with their benefit-sharing obligations as per South Africa's bioprospecting law and regulations.⁴⁹

⁴⁴ ABS-biotrade link: <https://www.abs-biotrade.info/>

⁴⁵ ABS – link: <https://www.abs-biotrade.info/projects/abs-capacity-development/general-information/>

⁴⁶ ABS – Biosa link: <https://www.abs-biotrade.info/projects/abiosa/general-information/>

⁴⁷ ABS – Bioinnovation link: <https://www.abs-biotrade.info/projects/bioinnovation-africa/general-information/>

⁴⁸ ABS value chains: <https://www.abs-biotrade.info/value-chains/overview/>

⁴⁹ SA Rooibos: <https://sarooibos.co.za/khoi-and-san-to-share-in-benefits-of-rooibos/>



11. PUBLICLY FINANCED R&D AND STATE-OWNED IP

Intellectual Property Rights from Publicly Financed Research and Development Act, 51 of 2008 (IPR-PFRD Act): Provides for the effective identification, protection, and utilisation of IP emanating from publicly financed research and development (R&D). IP emanating from publicly financed R&D is owned by the recipient of said funding, which includes any Higher Education Institution, any Science Councils, any institution identified as such by the Minister of the Department of Science and Technology.⁵⁰

- The IPR-PFRD Act provides for three possible IP ownership options:
 - **The default position:** Owned by the recipient (party that undertakes research and development) using funding from a funding agency and includes an institution. A funding agency means “*State or an organ of state or a state agency that funds research and development*”.
 - **The co-ownership provision:** Any private entity or organisation may become a co-owner of the intellectual property emanating from publicly financed research and development undertaken at an institution if:
 - there has been a contribution of resources;
 - there is joint IP creation;
 - appropriate arrangements are made for benefit sharing; and
 - an agreement is entered into for the commercialisation of the IP (all requirements must be met).
 - **The full cost arrangement:** In which IP ownership may be negotiated.
- **National Intellectual Property Management Office (NIPMO):** Responsible for implementing the IPR-PFRD Act. NIPMO aims to ensure that recipients of funding from a government funding agency assess, record and report on the benefit to society of IP emanating from publicly financed R&D. Recipients must protect IP emanating from publicly financed R&D from appropriation and ensure that it is available to the people of South Africa. A recipient must identify commercialisation opportunities for IP emanating from publicly financed R&D.⁵¹

⁵⁰ Act 51, 2008 link: <https://www.dsti.gov.za/images/pdfs/IPR%20Act%20of%202008.pdf>

⁵¹ Innovation Hub website: <https://www.theinnovationhub.com/hub-residents/biosciences/agencies/national-intellectual-property-management-office-res9>

■ Raising funds and support for innovations and inventions

- **Inventor Assistance Program (IAP):** Administered by WIPO, the IAP supports inventors and small businesses with limited resources to transform their innovation into commercial assets. The IAP matches selected beneficiaries with volunteer patent attorneys.⁵²
- **Technology Innovation Agency (TIA):** Under the provisions of the Technology Innovation Act.⁵³ TIA offers various funding instruments to support the development of technologies and innovations. These are differentiated based on the amount of funding required for technology development, the stage of technology development as defined by the technology readiness level (TRL), and whether the applicant's funding request aligns with the purpose of the TIA funding instruments.⁵⁴
- **Support Programme for Industrial Innovation (SPII):** SPII funds projects around technology development, technology and market validation, process/product development and market ready technology.⁵⁵
- **Technology and Human Resources for Industry Programme (THRIP):** This incentive funds applied research, design, engineering, and technology development.⁵⁶
- **Seed Fund:** This funds applied research, technology development and technology commercialisation to assist small, medium and micro-sized enterprises (SMMEs), and higher education institutions (HEIs) in bridging financing requirements to translate research outputs into fundable ideas for commercialisation.⁵⁷



⁵² WIPO IAP online platform: <https://iap.wipo.int/iap/>

⁵³ Act, 26 of 2008

⁵⁴ TIA funding instruments: <https://www.tia.org.za/funding-instruments/>

⁵⁵ SPII link: <https://www.thedtic.gov.za/financial-and-non-financial-support/incentives/support-programme-for-industrial-innovation-spii/>

⁵⁶ THRIP link: <https://www.thedtic.gov.za/financial-and-non-financial-support/incentives/thrip/>

⁵⁷ Seed Fund link: <https://www.thedtic.gov.za/financial-and-non-financial-support/incentives/seed-fund/>

- **SEDA Technology Programme (STP):** The Small Enterprise Development Agency's (SEDA) incubation programme incentive that supports technology and market validation, process/product development,⁵⁸ small scale manufacturing, market entry and market development. As a result of the merger of SEDA and SEFA (the Small Enterprise Finance Agency) to form the Small Enterprise Development and Finance Agency (Sedfa), STP is now under the purview of Sedfa.⁵⁹
- **Innovation Hub:** Offers several incubation programmes in Bioeconomy (agro-processing and pharmaceutical), Smart Industries (ICT and advanced manufacturing), and Green Economy (water purification, waste management and renewable energy).⁶⁰

State-owned company: Is either a company defined as a 'state-owned enterprise' under the Public Finance Management Act, 1 of 1999 (PFMA), or a company owned by a municipality. Most of the provisions of a public company will apply to state-owned companies as well. A state-owned company can also only be registered via e-mail.⁶¹

- **Copyright Act:** Ownership of any copyright conferred by Section 5 of the Act (which relates to ownership by the State or certain international organisations) shall initially vest in the State or the international organisation concerned, and not in the author.⁶²
- **Trade Marks Act:** A mark that contains the coat of arms, seal, or national flag of the Republic; or save with the authorisation of the competent authority of the convention country concerned, of any convention country; or a mark which contains any word, letter, or device indicating State patronage is unregistrable as a trade mark.⁶³

⁵⁸ SEDA link: <https://www.thedtic.gov.za/financial-and-non-financial-support/incentives/seda-technology-programme/>

⁵⁹ SEDFA website: <https://www.sedfa.org.za/>

⁶⁰ The Innovation Hub website: <https://www.theinnovationhub.com/about-us>

⁶¹ CIPC State-Owned Company: https://www.cipc.co.za/?page_id=2178#:~:text=A%20state%20Downed%20company%20is,state%20Downed%20companies%20as%20well

⁶² Section 21(2)

⁶³ Section 10(8) and 10(9)



PART 3
USE AND
PROTECTION
MEASURES
AGAINST THE
ABUSE OF IPRS



1. LITIGATION PROCEEDINGS AND RELIEF: TIPS AND TRICKS (COST SAVERS)

The IPR holder (and in some cases the registered/ recorded licensee) can take legal steps to protect or enforce their IPRs. Different strategies can be considered, depending on the facts of each case and the nature of relief you require. In addition to formal legal court proceedings, preliminary steps and alternative measures can be considered. These alternative measures may provide relief or protect your business from harm, without having to go to court. In this chapter, we explore formal proceedings and several other protection measures available against the abuse of IPRs.

- **Preliminary steps:** Formal court proceedings are costly and time consuming, taking up to 18-24 months to complete. A decision of the court of first instance may also be appealed, which can take up to an additional 12-18 months to complete. Only once the legal proceedings are complete will the requested relief, if successful, be ordered by the court in the handing down of the judgement. Preliminary steps and measures should also be considered prior to instituting formal court proceedings, including:
 - **IPR searches:** Used to identify infringement problems and provide background and details of any existing rights of an alleged wrongdoer, and possible defences that may be raised. Proprietor searches can be conducted to obtain details of IPRs in the name of the same proprietor. IPR searches provide details of IPRs recorded on the patents, designs, and trade marks registers.⁶⁴ Due to the technical nature of the rights and grounds for dispute, it is recommended that validity searches are conducted by a specialised attorney or agent. As an additional step, internet searches and company and director searches can be conducted to obtain full details of the nature and manner of use, activities, details of directors and owners of an infringing company and/or any related companies.⁶⁵



TIP

Online searches of the trade marks, patent and design register can be done via CIPC IPOnline.

⁶⁴ CIPC IPOnline quick links for free trade mark, patent and design searches and commercial trade mark searches: <https://iponline.cipc.co.za/>

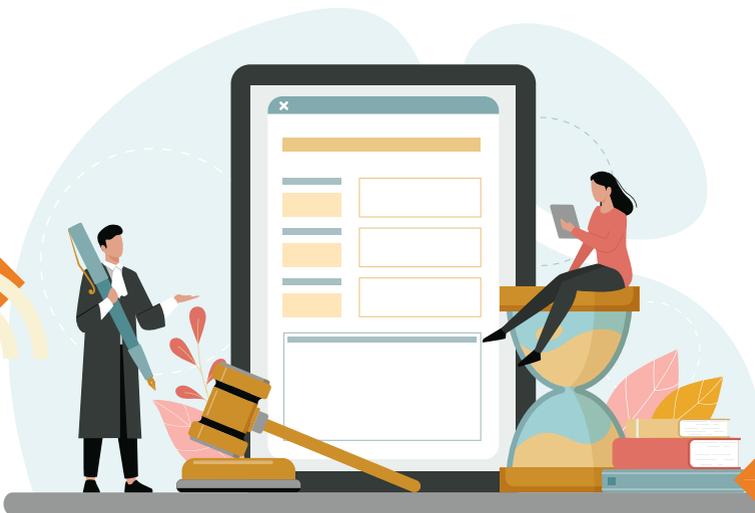
⁶⁵ BizPortal – CIPC Entity Search for enterprise details, director details, annual return details and Enterprise History: <https://eservices.cipc.co.za/Search.aspx>

- **Letter of demand:** A written document informing an alleged wrongdoer of the legal claim, setting out the desired relief and providing notice of intention to bring proceedings against the wrongdoer in cases where the demands are not met.

The objective is to persuade the wrongdoer to comply with the demands or enter discussions with you to obtain a suitable resolution before proceeding to court. There is no obligation to send a letter of demand before commencing court proceedings unless it is required to complete a cause of action. For example, in the case of copyright infringement, a wrongdoer may not be liable for damages if they were unaware of the existence of copyright or had no reasonable grounds to suspect they were infringing on the copyright.

For cost saving and recovery, it makes good sense to send a letter of demand, as, if a summons is issued without a letter of demand, and the wrongdoer complies with the demands, you will be liable for the costs of preparing and issuing the summons.

- **Opinion on merits:** Before instituting any proceedings, it is critical to assess the merits of your case and to consider possible defences that can be raised by a wrongdoer, including non-infringement or a counterclaim attacking the invalidity of the IPR. A specialist IPR professional or advocate can be approached to obtain an objective assessment of the legal position, which can help determine the merits of the case, and include recommended actions before proceeding to court.



- **Interim proceedings:** For urgent relief, an interim interdict or urgent proceedings may be considered. Interim interdicts (preliminary injunctions) are available and instituted by way of an application supported by evidence confirming:
 - the subsistence of a clear right in the relevant IPR, and that the IPR is valid and in force;
 - the likelihood of irreparable harm to you if the interim relief is not granted;
 - that the balance of convenience favours the granting of the interim relief; and
 - that you have no other satisfactory remedy.

- **Preservation of evidence - Anton Piller orders:** Court orders that allow the complainant to search and seize evidence from the wrongdoer's premises without prior notice. The primary purpose of the order is to prevent the removal or destruction of evidence that is relevant to the legal dispute. Courts impose strict compliance and procedural requirements before granting an Anton Piller order, and a supervising attorney is appointed to ensure compliance with the scope of the order. Request for discovery of documents can only be called for when proceedings are instituted.

- **Legal costs and disbursements:** Litigation based on the protection and enforcement of IPRs in South Africa can be costly, and the court has the discretion to award costs in favour of the party substantially successful in the litigation.

Costs are based on tariffs provided in the court rules, and attorneys charge their clients based on these tariffs or negotiated fees for professional services. Negotiated fees usually apply to litigation relating to IPR protection and enforcement measures in South Africa.

Disbursements, such as court fees, counsel fees and expert witnesses, are also included in costs. South African courts may make several types of cost awards, but usually award *party-and-party costs*, which costs are based on court tariffs, and not the actual negotiated costs of the successful party. Other costs awarded by courts include *attorney-and-client costs*, which may exceed the tariff rates in certain circumstances and attorney-and-own client costs, which are awarded as exceptional, and punitive costs in rare cases.



2. FORMAL IPR CIVIL PROCEEDINGS

The applicable IPR legislation provides for steps that can be taken to challenge the validity or registration of an IPR and to stop any unauthorised use, which infringes on these rights.

- **Nature of proceedings:** Proceedings may be commenced by either application (motion) or action (trial):
 - **Application proceedings:** Where there is no dispute of fact. Evidence is contained in affidavits, and ordinarily no oral evidence is heard. Where dispute of facts arises, the matter may be referred to as oral evidence.
 - **Action proceedings:** Where a dispute of fact exists or is likely to arise. Evidence is given by expert witnesses in the form of oral evidence, and further evidence may be led by way of affidavit. Witnesses are examined and cross-examined. Action proceedings are commenced by issuing summons, supported by the particulars of claim, setting out the essential claims and material facts relied upon.
- **Challenging the validity of an IPR:** These proceedings relate to the state of the IPR registers, that set out the nature and details of protection. Proceedings include:
 - **Opposition proceedings (trade marks):** A trade mark application is examined by the trade marks examiner, and once accepted, the trade mark application is advertised in the patent journal for opposition purpose.

In terms of the Trade Marks Act, any interested party may, within three months from the date of advertisement of a trade mark application, oppose a trade mark application to prevent the trade mark from proceeding to registration.⁶⁶

The opposition term can be extended upon application. The first extension is granted automatically by filing an online application with the Trade Marks Office, using IPOnline. Thereafter, additional extensions may be granted with the consent of the trade mark applicant. If refused, the Registrar of Trade Marks may be approached to extend the opposition term or any other period if good cause is shown.⁶⁷

⁶⁶Section 21 of TMA

⁶⁷Regulation 52 - Section 45(3) TMA

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- **The grounds for opposition:** Set out in Section 10, and if successful, the trade mark will be refused. Opposition proceedings are required to be lodged before the Registrar of Trade Marks and can thereafter be transferred to the High Court for determination at any stage during the proceedings and/or once pleadings are closed.
 - **Cancellation (revocation) proceedings:** Once registered, the validity and scope of protection of an IPR can be attacked on various grounds, resulting in the cancellation, partial cancellation, or limitation of the rights afforded by the IPR registration.
 - **Challenging the unauthorised use and infringement of IPRs:** The relevant IPR legislation sets out the circumstances in which the IPR is infringed, the available defences and remedies, and the process and steps to be taken. The relief available includes:
 - an interdict;
 - the delivery up of infringing products or removal of the infringing IPR;
 - an enquiry into damages suffered;
 - payment of a reasonable royalty in lieu of damages;
 - costs; and/or
 - any further or alternative relief deemed appropriate by the court.
 - **Hearing of IP related disputes:** South Africa does not have specialised IP courts, other than the Court of the Commissioner of Patents, and formal IP related disputes are heard in the High Court as the court of first instance.

However, particular matters may also be heard in several courts or tribunals. The Patents Act, Design Act and Trade Marks Act, provides powers to the relevant registrars to exercise powers and perform duties as provided for under the relevant Acts and accompanying regulations.

FORUM	JURISDICTION AND TYPE OF MATTERS HEARD
Court of Commissioner of Patents (Patents Act)	Court of first instance for all patent matters related to patent validity and infringement with nationwide jurisdiction, with the same authority as a single judge of the High Court.
High Court	The court of first instance for other IP matters such as trade marks, copyright, and design disputes.
Supreme Court	Highest Court of Appeal in all matters except for constitutional matters.
Constitutional Court	Where constitutional issues arise in the protection or enforcement of IPRs (public interest, balancing of IPR rights with constitutional rights, international treaty obligations and the like).
Trade marks Tribunal - Proceedings before the Registrar of Trade Marks (Trade Marks Act)	Proceedings dealing with the state of the register: Regulation 19 sets out the procedures to be followed in respect of opposition proceedings (Section 21); general powers to rectify entries in the register (Section 24); power to remove or vary registration for breach of condition (Section 26); and removal from the register (Section 27). ⁶⁸
Copyright Tribunal (Copyright Act)	Determine disputes arising between licensing bodies and persons requiring licenses; responsible for determining Needletime royalties when users and collecting societies cannot reach agreement on the amount.
Companies Tribunal (Companies Act)	Speedy resolution of company disputes, including name disputes, defensive names, use of a name or transfer of any such reservation or registration.

⁶⁸Full details on CIPC website: https://www.cipc.co.za/?page_id=4118

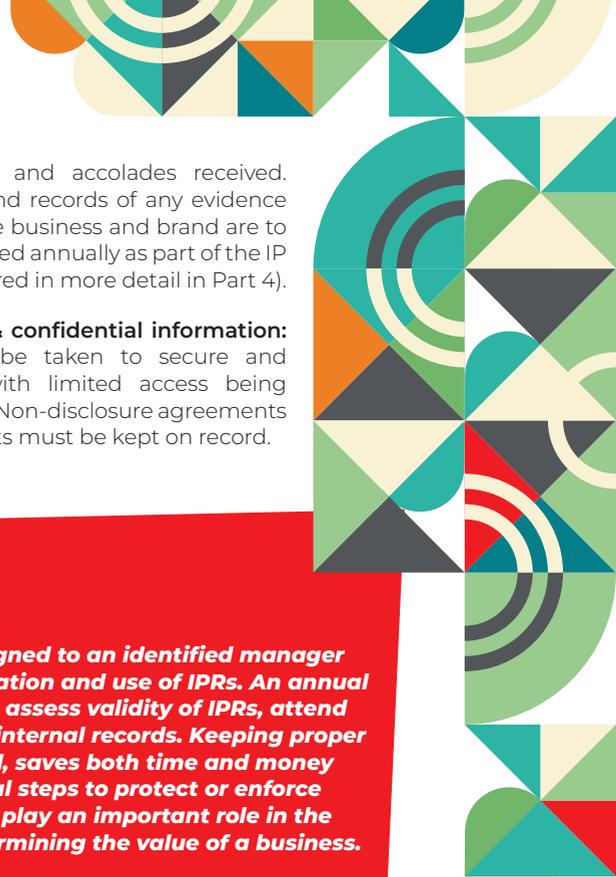
3. PROOF OF IPR AND THE COLLATION OF EVIDENCE FOR USE IN FORMAL PROCEEDINGS

- **Collation of evidence:** Collation of evidence confirming validity of IPRs and proof of infringement is critical for successful IPR proceedings. Consideration is to be given to any expert evidence required and identifying the person who is best suited to provide the evidence in the proceedings.
- **Proof of validity of registered IPRs:** Registration and applicable renewal certificates of IPRs must be securely retained as proof of their validity and the enforceability, of the scope and ambit of the protection afforded through the registration. Certificates of registration and renewal certificates are issued by the applicable registry in the case of patents, designs, trade marks, and copyright in cinematographic films. Renewal dates must be recorded and the relevant IPR must be renewed within the applicable time frames to avoid the lapsing of these rights.
- **Proof of unregistered IPRs:**
 - **Subsistence of copyright:** In the case of copyright works, copyright subsists automatically, without registration. It is essential to keep proper records of the way the copyright was created, retaining proper records and details of the creator or author (or joint authors) of the work, job descriptions, and the date the work was created and/or first published. Retain a sample of the work created, together with any supporting evidence and documents, compiled to form a library of works.
 - **Copyright commissioned works:** Where works are commissioned, and where you intend retaining ownership in the created work, ensure that a written copyright assignment agreement is entered into at the time the work is created. The assignment agreement must clearly identify the work being assigned, be in writing, and signed to be valid.
 - **Common law rights:** Proof of the goodwill and reputation acquired through use, in both the business operation and brand, must be retained on record. South Africa follows the *first-to-use* trade mark system, acknowledging common law rights acquired through use above the date an application for registration of a trade mark is filed.

Proof of brand reputation is a fundamental requirement to establish common law rights in a brand and to sustain a passing off claim.

Proof of actual use of a trade mark, will also be required to avoid cancellation actions based on non-use of a trade mark.

Evidence of product trials and testing, sales figures, advertising spend and promotional material and brochures (including spill-over advertising where brands may not be available directly for sale in South Africa, particularly in respect of online sales), traffic to website, and enquiries of products in other jurisdictions, consumer reports, market



survey reports, or awards and accolades received. The list is not exhaustive, and records of any evidence confirming reputation in the business and brand are to be kept on record and updated annually as part of the IP management process (covered in more detail in Part 4).

- **Trade secrets, know how & confidential information:** Effective measures must be taken to secure and maintain confidentiality, with limited access being provided to only key parties. Non-disclosure agreements or confidentiality agreements must be kept on record.



TIP

Responsibility should be assigned to an identified manager to keep records of the registration and use of IPRs. An annual audit should be conducted to assess validity of IPRs, attend to renewals and updating of internal records. Keeping proper records of the rights acquired, saves both time and money when having to take any legal steps to protect or enforce your IPRs. These records also play an important role in the valuation of brands and determining the value of a business.

Trade secrets can only be enforced if the trade secret:

- comprises of confidential information which is known only to a restricted number of persons;
- which is applicable in trade and industry; and
- which has economic and business value to the party that wants to enforce this.

Trade Secrets are often part of the know-how of staff, hence the importance of codifying know-how in a confidential manner.

Know-how vests in natural persons. Ensure that staff are obliged to codify their day-to-day work. This should be enforced in the employment agreement, where an appropriate confidentiality clause, trade secret clause and possibly also a restraint clause should be included. Employment agreements often deal with IP in general, which can cause problems when disputes with former employees arise. Codification includes the preparation and submission of Standard Operating Procedures (SOP), data, formulas, processes (chemical, mechanical, biological), laboratory note books, contracts, etc.

4. ANTI-COUNTERFEITING AND ANTI-PIRACY

Counterfeit Goods Act, 37 of 1997 (CG Act): Introduced measures to combat the trade in counterfeit goods and prohibits the counterfeiting of products. Counterfeit goods are colourable imitations that are substantially identical to the IPR owners' protected goods featuring the IPRs.

Counterfeiting under the CG Act: Includes trade mark counterfeiting, copyright piracy, and the unauthorised use of prohibited marks. The remedies and measures provided for under the CG Act are alternative or in addition to the remedies and relief to those provided for under the Trade Marks Act and Copyright Act. The terms *counterfeiting*, *counterfeit goods*, *Intellectual Property rights*, and *protected goods* are defined in the definitions contained in Section 1 of the CG Act.

TIP



The CIPC offers training on investigating and prosecuting IP crimes, including workshops based on *The South African Training Manual on IP Crime Prosecution for Law Enforcement Authorities and Prosecutors in South Africa*.

- **Relevant IPRs covered by the CG Act:** Intellectual property rights are defined narrowly, and only include:
 - **Trade marks:** Rights conferred by the Trade Marks Act (trade marks registered in South Africa or unregistered well-known trade marks).
 - **Trade mark counterfeiting:** Infringe registered trade marks, but all trade mark infringements do not result in counterfeiting. Counterfeiting applies to marks that are identical or colourable imitations of the protected trade mark. Instead, trade mark infringement is broader, as it covers both identical or confusingly similar trade marks that are likely to confuse. Trade mark infringement is not a criminal offence in South Africa, except in the case of counterfeiting of products.
 - **Copyright:** Copyright in any work in terms of the Copyright Act.
 - **Copyright piracy:** The unauthorised reproduction or distribution of copyrighted material without the owner's permission or consent, both online and in the market. Copyright infringement is a criminal offence, and the Copyright Act provides for criminal penalties for copyright infringement, where the wrongdoer has guilty knowledge, in other words, that the wrongdoer was aware that the work is protected by copyright and that the acts they are doing is infringing.

- **Prohibited marks:** Marks declared by the Minister of Trade, Industry and Competition to be prohibited by notice under Section 15 of the Merchandise Marks Act.
 - **Unauthorised use of prohibited marks:** The prohibition may be absolute or conditional, as set out in the notice. Examples of prohibited marks include the CIPC logo, The Protea Device, the Olympic logo, WWF and Panda Device, FIFA World Cup, and Representations of Nelson Mandela Bay Stadium, Peter Mokaba Stadium, Mbombela Stadium, Greenpoint Stadium, and Soccer City Stadium.

- **Dealing in counterfeit goods is prohibited:** Section 2(1) of the CG Act prohibits several activities related to counterfeit goods, including:
 - possession of counterfeit goods in the course of trade for the purpose of dealing in those goods;
 - manufacture, production, or making of the goods other than for private and domestic use of the person;
 - selling, hiring, bartering or exchange, or the offering or exposing for sale;
 - exhibitions in public for the purpose of trade;
 - distribution for purposes of trade or for any other purpose, resulting in prejudice to the IPR owner;
 - importing into and/or exporting from South Africa other than for the private and domestic use of the importer or exporter; or
 - any other manner disposing of in the course of trade.

- **Counterfeiting is prohibited and an offence:** Under Section 2(2) of the CG Act counterfeiting is prohibited and any person found dealing in counterfeit goods is guilty of an offence if at the time of committing the act or conduct, the person knew or had reason to suspect that the goods were counterfeit goods (intent), or the person failed to take reasonable steps to avoid any act of dealing in the counterfeit goods (negligence).

- **Laying a complaint (“the Section 3 Complaint”):**
 - **The Complainant:** Any person who has an interest in the protected goods, such as the owner or licensee of the IPR, importer, exporter or distributor, or their authorised agent, representative or attorney-who reasonably suspects that an offence related to dealing in counterfeit goods has been, or is being committed or likely to be committed, may lodge a complaint affidavit under the CG Act with any Inspector.

- **An Inspector:** Includes any person appointed or designated under Section 22 of CG Act to be an inspector, any police official holding the rank of sergeant or higher, and/or the Commissioner for Customs and Excise, as well as any official performing functions under Section 15 of the CG Act in relation to goods being imported into South Africa.

SECTION 3 COMPLAINT CHECKLIST ⁶⁹	
Complainant	Show the rights and title in the IPR or interest in the protected goods featuring the IPR. In the case of authorised representative provide proof of authority to lodge the complaint and POA.
IPR	Provide evidence confirming the IPR relied upon is valid and in force.
Protected goods	Provide details of the original goods where applicable.
Counterfeit goods	Furnish information and particulars to the satisfaction of the inspector, confirming that the goods are prima facie counterfeit goods.
Offence	Establish that there is a reasonable suspicion that an offence referred to in Section 2(2) has or is being committed, or is likely to be committed, referring to the relevant act(s) of dealing in counterfeit goods.
Specimen of counterfeit goods	Provide a sample of the counterfeit goods or enough information to identify the distinctive features of the counterfeit goods.
Infringement of the IPR	Evidence confirming the infringement of the trade mark, copyright works or prohibited mark.
Contraventions of the CG Act	Setting out the provisions of the CG Act relied upon, and the relief sought in the complaint.

⁶⁹Section 3 CG Act – Laying a complaint

- **Inspector's powers in relation to counterfeit goods:** Once the Inspector is satisfied that the complainant is entitled to lodge the complaint, that the goods are *prima facie* protected goods, the IPR *prima facie* subsists, and the suspicion upon which the complaint is based is reasonable, the Inspector must take the appropriate steps.

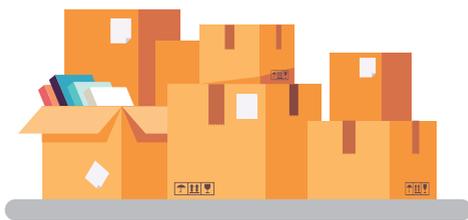
These steps include to search, detain, and seize suspected counterfeit goods, as well as collect evidence relating to the suspected counterfeit goods or offence committed, in the appropriate manner as set out in Section 4 of the CG Act. The inspector may only act with authority of a warrant issued in terms of Section 6 and within the extent of powers outlined in Section 5(1).

- **Actions without a warrant:** An inspector can, in terms of Section 5(2) search, seize and detain counterfeit goods without a warrant if there are reasonable grounds to believe that an act of dealing in counterfeit goods is being committed.

Any act performed without a warrant must, in terms of Section 5(4) be confirmed by a Magistrate or Judge of the High Court within 10 working days of the date the acts were performed, failing which, all seized goods must be returned and make good any damages caused.

Storage of counterfeit goods: Upon seizure, counterfeit goods are required to be stored in a counterfeit goods depot. Costs of storage are paid by the IPR owner in capacity as complainant. The goods are to remain in storage until issuance of a release notice by the Inspector, after finalising any civil or criminal proceedings against the suspect, or where an undertaking is secured from the suspect before finalising civil proceedings. Storage costs can be claimed from the suspect when instituting civil proceedings.

The release notice: Authorises the destruction of goods (in cases where the goods have been confirmed to be counterfeit), or the return of the goods to the suspect (in cases where the time periods have not been complied with or where the goods are not found to be counterfeit).



■ Customs brand recordal and border measures

- **Customs recordal:** IPRs are protected by customs against the importation and exportation of counterfeit goods, provided the IPR owner has registered with customs for such protection.

Section 15 of the CG Act allows the owner of an IPR to apply to the Commissioner for Customs and Excise (SARS) to seize and detain all goods which are counterfeit and which are imported into or enter the country.

This application is called a Section 15 Application (Completed on form SC-CC-01-A1) and forwarded to the National Coordinator: Counterfeit Goods, Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria, or Private Bag X923, Pretoria, 0001 for consideration. Once approved, the application is valid for the period as specified in the application, up to a maximum of 10 years.

- **Border measures:** One of the main objectives of the CG Act is to prevent the release of counterfeit goods into the local market in South Africa. Customs officials may, in terms of Section 113A of the Customs and Excise Act, detain suspect counterfeit goods upon importation into South Africa.

A sample of the goods is provided to the IPR owner's appointed representatives, and a Section 3 complaint is lodged with Customs, whereafter Customs will proceed with the application for the formal seizure of the counterfeit goods.

TIP



The Customs and Border Management External Policy-Counterfeit goods provides relevant information, procedure, and requirements (SC-CC-28 updated 18 February 2021).

- **Seizure Notice and Inventory:** Following the formal seizure of the goods under the CG Act, the Inspector must prepare an inventory of the seized goods within 72 hours. The Inspector must also issue the Notice of Seizure (S7(1)(d) Notice) providing details of the counterfeit goods depot where the goods will be stored, with notice to the suspect as well as the IPR owner, advising of the IPR owner's right to lay a criminal complaint.

- **Formal proceedings to be instituted:** The Complainant has the choice to proceed criminally and/or civilly against the suspect. All time periods for criminal prosecution and civil enforcement run from the date of the issuance of the seizure notice.
 - **Criminal prosecution:** If the complainant intends laying a criminal charge and request criminal investigations into the matter, this must be done within three days of issuance of the seizure notice. The State thereafter must, within 10 (working) days, inform the suspect in writing of its intention to institute a criminal prosecution for an offence of dealing in counterfeit goods, and commence criminal proceedings 10 (working) days after giving such notice.

 - **Civil proceedings:** If a complainant intends instituting civil proceedings against the suspect, it must provide a written notice to the suspect of its intention to bring such proceedings within 10 (working) days of the issuance of the seizure notice, and proceedings must be instituted within 10 (working) days thereafter. There is no prescribed format of the notice and usually takes the form of a letter of demand.

- **Seized goods to be released by the Inspector** if criminal investigation or criminal or civil proceedings are not contemplated against the suspect:⁷⁰



TIP *Failure to institute proceedings or to comply with these statutory time periods applicable to the criminal and civil proceedings will result in the goods being released to the suspect.*

⁷⁰ Section 9 of CG Act -Release of seized goods

- **Criminal Penalties:** On first conviction, a fine of up to a maximum of R5 000,00 per article, imprisonment for up to three years or both, may be imposed for each article to which the offence relates. For subsequent convictions, the maximum fine is increased to R10 000,00 per article, with a maximum period of five years' imprisonment.⁷¹



- **Investigations and chain of evidence management:** To ensure that evidence is authentic and can be used in court proceedings (criminal or civil proceedings), it is critical to manage the process of tracking the movement of evidence from the time of discovery or collection until the presentation in court.

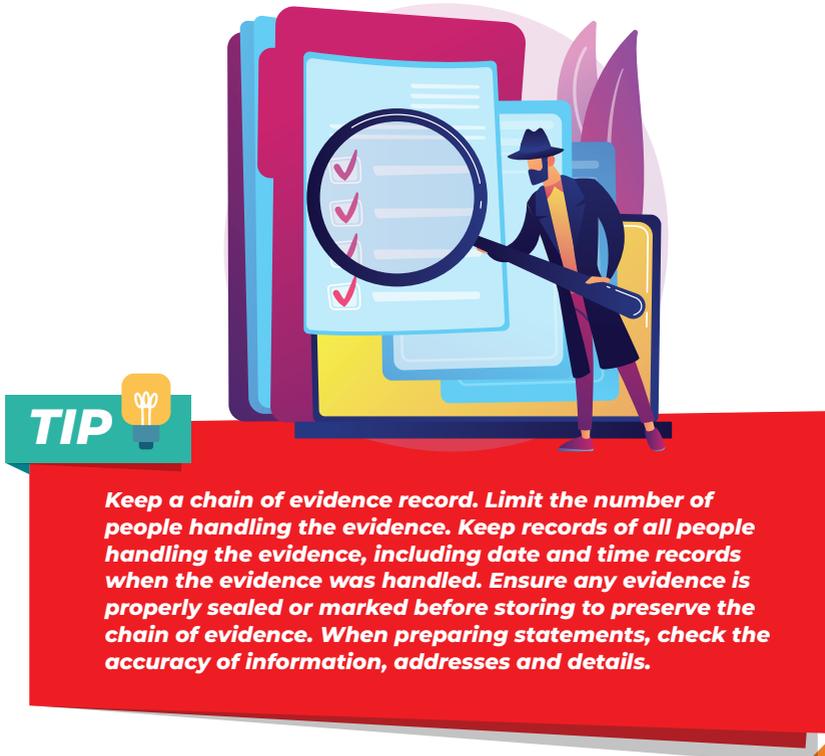
The process of managing evidence is called a chain of evidence. The chain of evidence assists in proving the connection between the wrong-doer's actions and the harm caused to you and establishing liability in civil or criminal proceedings.

The main types of evidence collected are:

- **Physical evidence:** Physical objects or samples of infringing goods or material, usually collected through the making of a test purchase of the goods.

⁷¹Section 19 CG Act - Penalties

- **Demonstrative evidence:** Evidence that sets the scene or provides for information, such as photographs showing various elements of the infringing products, diagrams, or maps showing locations.
- **Documentary evidence:** Any written or recorded document or communications relevant to the case. This includes IPR registration certificates, advertising or sales records, business documents and correspondence.
- **Testimonial evidence:** Statements made by a person about facts within their personal knowledge, which they have seen, heard or experienced, that are used to support a claim or legal argument, in the form of spoken statements made by a witness under oath in court, or contained in a written statement made under oath in the form of an affidavit.



TIP

Keep a chain of evidence record. Limit the number of people handling the evidence. Keep records of all people handling the evidence, including date and time records when the evidence was handled. Ensure any evidence is properly sealed or marked before storing to preserve the chain of evidence. When preparing statements, check the accuracy of information, addresses and details.

5. ADVERTISING, AMBUSH MARKETING, CONSUMER PROTECTION PROVISIONS, PARALLEL IMPORTS AND LABELLING

5.1 Advertising Practice

- **Advertising Regulatory Board (ARB):**⁷² The ARB administers the Code of Advertising Practice (the Code), on behalf of the advertising and market industry, regulating the content of South African Advertising. Complaints can be lodged with the ARB for advertising contrary to the Code where the unauthorised use of IPRs, such as copyright works and trade marks, where the use infringes the IPRs, or where the advertising takes advantage of another's advertising goodwill.
- **Code of Advertising Practice (the Code):** The ARB decisions are governed by the Code, based on the International Code of Advertising Practice, prepared by the International Chamber of Commerce. The Code, Procedural Notes and Appendices are available for download from the ARB website. The Code is a dynamic document and constantly reviewed. Code review submissions can also be provided to the ARB using email info@arb.org.za.
- **Principles concerning advertising:** Section II of the Code contains general principles of advertising, and Section III covers specific categories of advertising.
- **Advertising goodwill:** The Code prohibits advertisers from taking advantage of advertising goodwill relating to the trade name, symbol of the product or service, or advertising campaign or advertising property, unless the prior written consent has been obtained from the owner of the advertising goodwill.

TIP



Make sure you are familiar with the full scope and ambit of the Code, and that your advertising material complies with the provisions set out in the Code. Although you may not be a member of the ARB, most advertisers and agencies are members of the ARB and broadcasters are also bound to the Code.

⁷² ARB website link: <https://www.arb.org.za/index.html>

Comparative advertising: The Code permits factual comparisons between products and services, but with clear limitations, including:

- adherence to all legal requirements, including compliance with the provisions of the Trade Marks Act;
 - claims must be capable of substantiation; claims made must not be confusing or misleading and any claim must be material, relevant and objectively determinable; and
 - there must also be no infringement of advertising goodwill.
- **ARB Complaints procedure:** The ARB accepts complaints about the content of advertising and the complaint procedure is covered in the Procedural Guide contained in the Code:
- consumers can use the online complaint form on the ARB website and there is no fee;
 - companies should first try to settle the dispute and can then submit a complaint via email to complaints@arb.co.za, with payment of a fee;
 - complaint must be in writing, disclosing the identity of the complainant, setting out the grounds of complaint and relevant particulars of the advertisement, as well as the advertiser's details, attaching relevant photographs or scan of the advertisement;
 - upon receipt, the ARB Directorate will consider the complaint and call on the advertiser to provide written comments;
 - the Directorate will then either attempt to resolve the matter, make a ruling on the complaint, or refer the complaint to the appropriate committee; and
 - any party aggrieved by the ruling may appeal to the Advertising Appeal Committee, with a final appeal to the Final Appeal Committee, which will make a final ruling.

TIP



If your complaint is not advertising content related, the ARB has a handy list of other organisations that can be contacted for assistance: <https://www.arb.org.za/other-organisations.html>

■ **Sanctions:** The ARB may order the:

- withdrawal of the advertisement in its current format.
- direct the advertiser to submit a proposed amendment to its advertisement;
- require the advertiser to submit all future advertising to the ACA Advisory Service at their own cost before publication (applicable if more than one adverse ruling is issued within a 12-month period, typically imposed for six months);
- impose adverse publicity, including the publication of the names of defaulters;
- order the defaulter to publish a summary of the ruling, as proposed by the ARB, in all or some of the media where the advertisement was published.

If the person against whom the ruling was made fails to comply, the ARB may impose any or all of the above sanctions in addition to those initially imposed.



- **Jurisdiction of the ARB:** The ARB is a membership-based entity, making decisions for the guidance of its members and broadcasters. Members of the ARB are required to adhere to the Code. All advertising on electronic broadcast media is subject to the Electronic Communications Act,⁷³ in terms of which all broadcasters must adhere to the Code.

Where the ARB receives a complaint against a non-member, it will give the company an opportunity to respond. If the company fails to respond or indicates that it does not regard the ARB as binding, a decision will be made simply to guide the members and broadcasters.

⁷³ Act, 36 of 2005

5.2 Ambush marketing

Where a company associates itself with a major event (exhibition, show or competition of a sporting, recreational or entertainment nature), without being an official sponsor to gain publicity and media coverage without paying for it.

- **Protected events and prohibited marks:** Section 15A of the Merchandise Marks Act (as amended), provides that The Minister of Trade and Industry may declare certain events as “protected events” and certain marks as “prohibited marks” for a specified period of time. This period must end no later than one month after the event’s completion.

During the protection period, no person may use a trade mark in connection with the event in a manner intended to generate publicity for the trade mark or to gain a special promotional benefit from the event without prior written consent from the event organiser. “Use of a trade mark” includes any visual or audible reproduction of the mark, as well as its use in promotional activities.

Contravening these provisions is a criminal offence.

5.3 Consumer Protection Act (CPA) & the National Consumer Commission (NCC)

- **The CPA:** Guarantees the right to fair and responsible marketing. The Act prohibits misleading advertising, unfair marketing practices and marketing that is fraudulent, false, misleading, or discriminatory.
 - **Consumer rights:** The CPA sets out key consumer rights, including:
 - the right to equality, privacy, and freedom of choice.
 - the right to fair and transparent disclosure of information.
 - protection against unfair marketing practices and dishonest dealings.
 - the right to fair, just, and reasonable terms and conditions.
 - access to goods and services of fair value, good quality, and safety.
 - the right to hold suppliers accountable.
 - **Responsibility of suppliers:** Suppliers have a set of responsibilities under the CPA to ensure they comply with the law and protect the rights of consumers, including: provision of accurate and transparent information, honouring warranties and guarantees, resolving consumer complaints, ensuring product safety, and fair pricing and advertising.

- **Parallel Imports (grey goods):** Parallel imports (also known as grey goods) are original products imported into the country without the authorisation of the IP owner, and outside of the approved channel of import and supply.
 - **Trade Marks Act:** The importation of parallel imports does not infringe the registered trade mark rights, unless the goods are altered to such an extent that they are no longer original.
 - **The Copyright Act:** if an importer knew the import of the goods bearing the copyright work would constitute copyright infringement, this is considered copyright infringement.
 - **The CPA:** Requires that parallel imports must be marked with a prominent notice advising consumers that the goods have been imported without the approval or licensee of the registered trade mark. The notice must also indicate that no guarantee or warranty will be honoured by any authorised importer of the goods. Where no such notice appears, a complaint can be lodged with the NCC.⁷⁴
- **National Consumer Commission (NCC):** The NCC derives its powers from the CPA (Section 85). Its primary function is to enforce the CPA through consumer awareness and business guidance interventions. It also handles complaints, issues and enforces compliance notices, refers anti-competitive behaviour to the Competition Commission, and refers offences to the National Prosecuting Authority. Additionally, the NCC refers matters to the Consumer Protection Tribunal (Tribunal) and represents cases before the Tribunal.
- **Introduction of NCC e-Service to file consumer complaints:** The NCC is introducing an e-Service portal that allows consumers to lodge complaints against alleged contraventions of the CPA. Consumers would have to register and have an approved profile before lodging a complaint and the status of the complaint can be checked by accessing the profile.⁷⁵

TIP



The NCC website is user friendly, providing consumers information on provisions of CPA, legislation, Industry codes of conduct, e-Services registration and requirements lodging of consumer complaints: <https://thncc.org.za>

⁷⁴ Section 25(2)

⁷⁵ Section 4 CPA read with CPA Explanatory Note 8 of 2023

5.4 Labelling

In addition to the labelling requirements outlined in the CPA, various goods are subject to well-developed regulatory standards for labelling and marking.

Failure to comply with these regulations may result in compliance notices or legal action, including criminal prosecution.

Businesses must carefully review and adhere to the specific legislation, regulations, and standards applicable to their products, for example:

- **Foodstuffs:** The Department of Health regulates food labelling through the Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972 and the regulations set out labelling requirements for various types of foodstuffs.
- **Agricultural products:** The Minister of Agriculture regulates the production, grading, marking, and sale of certain agricultural products in South Africa through the Agriculture Products Standards Act, 119 of 1990. This includes various regulations, such as those governing the grading, packing, and marking of maize products¹, as well as regulations related to geographical indications (GIs).
- **Liquor products:** The National Liquor Authority is responsible for the administration of The Liquor Act and Liquor Products Act, which sets out the requirements for labelling of alcoholic beverages.





6. DOMAIN NAME DISPUTES AND ONLINE INFRINGEMENTS

- **Registration of domain names:** Domain names are unique names that identify the IP address of a server that hosts a website or email. The last part of a domain name is called the top-level domain (TLD), of which there are several types, for example:
 - **TLD:** Generic TLDs for example: .com, .info, .net and .org.
 - **New gTLD:** New generic TLDs that have recently been added to the Internet, sponsored by entities such as community, industry groups or well-established companies, for example: .click, .app, .store, and .online.
 - **ccTLD:** Country code TLDs represent a specific country or region, for example: .co.za.
 - **sTLD:** Sponsored TLDs, specialised domain extensions with a sponsor, for example: .gov for government agency websites, and .edu for educational institutions.
- **Domain name disputes:** The unauthorised use of a trade mark in a domain name for a website, used for promoting and offering of goods and services which are identical or confusingly similar to those covered by a trade mark registration, can infringe the trade mark, and/or constitute passing off under common law.

As an alternative to instituting formal trade mark infringement or passing-off proceedings, the domain dispute procedure offers a cost effective, efficient, and quick resolution of the domain disputes. The focus of the disputes is the domain name itself, and not the content or details included on the website. The remedy provided for in domain dispute procedures is the transfer or cancellation of a domain name, and would not in itself stop that person from continuing in its activities under a different domain name.

- **gTLD domain disputes:** The ICANN Uniform Domain Name Dispute Resolution Policy (UDRP) resolves conflicts related to the registration of gTLD domain names. The UDRP process involves three stages, and the streamlined process ensures efficient resolution of the domain name disputes:
 - **lodging a complaint:** Submit an online complaint to an authorised UDRP provider, such as WIPO, detailing the grounds for the dispute, evidence of rights, or proof of bad faith registration and use.
 - **response from the domain holder:** The domain name holder is given an opportunity to respond to the complaint.
 - **adjudication:** The UDRP provider reviews the case and issues a decision.
- **.co.za – ccTLD domain disputes:** The SAIPL is accredited as a dispute resolution provider for .za domain disputes. A complaint can be lodged on the grounds that the domain name is abusive or offensive. Evidence of abuse or offense is required to be submitted together with the complaint.

The SAIPL has prepared dispute template documents to serve as a guide for the preparation and submission of a complaint by email. The applicable procedures, resources (including the ADR Regulations, ECT Act, and dispute templates), fees, case decisions and relevant information can be assessed on the website www.domaindisputes.co.za.

- **New gTLD domain disputes:** All disputes arising out of the application for new gTLDs are resolved through ICANN’s new ICC procedure, and objections can be based on four grounds of objection: string confusion, legal rights, limited public interest or community.⁷⁶

TIP

BEFORE LODGING THE COMPLAINT: Try to first approach the party to resolve the dispute. Research the domain name registration details and domain name status; review the domain dispute rules; gather evidence to support your case; pay the fees and then submit complaint.

⁷⁶ICANN New gTLD Dispute Resolution; <https://iccwbo.org/dispute-resolution/dispute-resolution-services/adr/icann-new-gtld-dispute-resolution/#:~:text=All%20disputes%20arising%20out%20of,under%20international%20principles%20of%20law.>

- **Take-down notices:** A quick and cost-effective method to remove or block access to content on a website that is offensive or infringes on IPRs or other rights can be achieved through the Internet Service Providers Association (ISPA) under the provisions of the ECT Act.

TIP



Check whether the online market place or social media platform where the abuse is taking place has an internal complaint or take-down procedure in place. If so, a complaint can be lodged following the relevant take-down or complaint procedure as an alternative to the ISPA takedown procedure

- Section 77 of the ECT Act which outlines a procedure allowing a complainant to notify a service provider, in writing, of unlawful activity.
- The notification must include the complainant's identity, the rights alleged to be infringed, details of the material or activity considered unlawful, the remedial action sought, and a declaration that the complaint is made in good faith and the information provided is true and accurate.
- Any person applying for a take-down notice, who knowingly or materially misrepresents the facts, is liable for damages for wrongful takedown.
- The take-down notice is lodged online using the ISPA form.⁷⁷



⁷⁷ISPA Take-down forms: <https://ispa.org.za/tdn/take-down-form/>

7. ALTERNATIVE DISPUTE RESOLUTION (ADR)

ADR is a less expensive and usually a quicker way for parties to settle disputes without the need for the institution of formal proceedings.

ADR options provide a structured process for resolving disputes and can often result in a fair and satisfactory outcome for both parties.

Types of ADR include:

- **Mediation:** A non-binding voluntary process involving a neutral third party supporting both parties in finding a mutually acceptable solution. It is a good way to resolve emotionally charged disputes and to preserve relationships.
- **Arbitration:** Involves a third party making a binding decision on the dispute and is popular for resolving IP disputes, particularly involving parties from different jurisdictions. Arbitration also allows the parties to select arbitrators with relevant expertise, and the proceedings and award are kept confidential.
- **Intellectual Property Arbitration Centre, South Africa (IPACSA):** Is an arbitration centre specialising exclusively in IP disputes, where disputes are resolved by leading IP Counsel.⁷⁸
- **WIPO ADR:** The WIPO Arbitration and Mediation Center offers time and cost-efficient ADR options to enable parties to settle domestic or cross-border commercial disputes. The WIPO Center is international and specialised in IP and technology disputes. The WIPO Center provides recommended ADR contract clauses to facilitate party agreements to refer a dispute to WIPO ADR.⁷⁹

TIP



ADR clauses may be included in a contract as an initial means to settle disputes between the parties arising from breach or non-compliance. If there is a contractual arrangement in place (written, verbal or contained in terms and conditions you accept), you may be obliged to follow ADR before going to court.

⁷⁸ IPACSA website: <https://www.ipac-sa.co.za/>

⁷⁹ WIPO Madrid System: <https://www.wipo.int/web/madrid-system>

8. BEYOND THE SOUTH AFRICAN BORDER - IP IN AFRICA

IPRs are territorial in nature and South African IPR registrations cannot be used in another territory to enforce your IP rights in that country.

As your business grows and your goods and service offering extend into additional African and other international territories, it is essential to ensure that your IPR protection strategy is extended to these new territories, to allow you to enforce against unauthorised use in these other territories. A proactive approach is recommended, and early IP protection in neighbouring countries or other key African territories is recommended, as obtaining registration in other countries can take some time to register.

In addition to seeking protection by filing IP registrations in each territory (national filings), there are international or regional IP protection systems that may be considered, where appropriate:

- **International protection systems:** WIPO's Madrid System (IR) and the Patent Cooperation Treaty (PCT) are both international systems that help with the registration of IP.

- **IR:** The Madrid System is the international trade mark system which provides for registering of a single international trade mark application, paying one set fee to apply for protection in up to 131 countries covered by the Madrid System members. Although South Africa intends to join the Madrid System, it is not a current member. A party would only be able to use the system if they are a national of, or are domiciled in one of the countries covered by the Madrid System 115 members. The Madrid Monitor allows the users to follow the status of the IR applications or registrations, obtain detail of IRs registered through the Madrid system, and keep an eye on the competitor's trade marks.⁸⁰

TIP



Be proactive and consider economic factors resulting in cross-border informal trade, which may result in your goods entering new markets before you have formally established a business in that country.

⁸⁰ WIPO Madrid System: <https://www.wipo.int/web/madrid-system>

- **PCT:** Allows users to seek patent protection for an invention in multiple countries by filing a single international patent application. South Africa is a member of the PCT.⁸¹
- **Regional protection in Africa:** Africa has two regional IP Organisations that provide protection for IP in the region, namely; the African Regional Intellectual Property Organisation (ARIPO), and Organisation Africaine de la Propriété Intellectuelle (OAPI):
 - **ARIPO:** An inter-governmental organisation that supports cooperation amongst member states in IP matters. ARIPO is open to member states of UNECA or AU and comprises 22 member states. Although South Africa is not a member state, the neighbouring countries of Namibia, Botswana, Zimbabwe, Mozambique, Kingdom of Eswatini, and Kingdom of Lesotho are members. The ARIPO Regional IP Database provides details of patents, designs, and trade mark filings by country.⁸²
 - **OAPI:** A regional organisation, based in Cameroon, that promotes IP cooperation and protection, and regional filing system for trade marks, designs, and patents, in most French-speaking African countries, with 17 member states currently. All member states are automatically covered in an OAPI trade mark application. South Africa is not a member state of OAPI.⁸³
- **Africa cross-border enforcement measures:** There are no single uniform IP systems or laws within Africa, other than the ARIPO and OAPI regional systems. Protection and enforcement measures are under the national laws of each country, which makes enforcement of IP rights more challenging.

As a result of Africa's porous borders, goods flow freely between countries, particularly because of informal cross-border trade. It is therefore critical to consider IP protection in neighbouring territories, as well as countries where Africa's main ports are situated, to support an effective cross-border enforcement strategy.

⁸¹ WIPO PCT: <https://www.wipo.int/pct/en/>

⁸² ARIPO website: <https://aripo.org/>

⁸³ OAPI website: <http://www.oapi.int/index.php/en/>



- **African Continental Free Trade Area (AfCFTA):** A trade agreement (the Agreement) that aims to create a single market for goods and services across Africa, resulting in the world's largest free trade area. The overall mandate is to create a single continental market by eliminating trade barriers and boost intra-Africa trade. Trading under the AfCFTA regime commenced on 1 January 2021.

The AfCFTA will be negotiated in two phases covering the respective Protocols:

- **Phase One:** Covering trade in goods and services, dispute settlement mechanism and customs trade facilitation; and
- **Phase Two:** Covering intellectual property rights, investment, competition policy, digital trade, and women and youth in trade. The promotion and protection of IPRs are central to achieving the AfCFTA objectives.

The IP committee was established in May 2021 and has held capacity building activities on various critical issues related to IPRs in preparation for the negotiators and development of the AfCFTA protocol on IPRs. The Protocol on IPRs has not, however, been made public.⁸⁴

⁸⁴AfCFTA website:<https://au-afcfta.org/>



PART 4

COMMERCIALISATION AND MANAGEMENT OF IPRS





1. IP COMMERCIALISATION

The process of bringing the IPRs to market for them to be exploited in return for business profits and growth. The way the IPRs are in fact exploited will depend on several internal and external factors, including market factors, the relevant industry, the structure and objective of the business, culture of the business, business strategy, resources available, and the nature of the IPRs concerned.

A business may either use the IPRs themselves in the course of business, assign or sell the IPRs to third parties, or license the rights for others to use in the form of license or franchise agreements or joint ventures.

- **Using IPRs:** When using your IPRs in your own business, ensure that you have internal management systems and tools in place.



IPR USE CHECKLIST

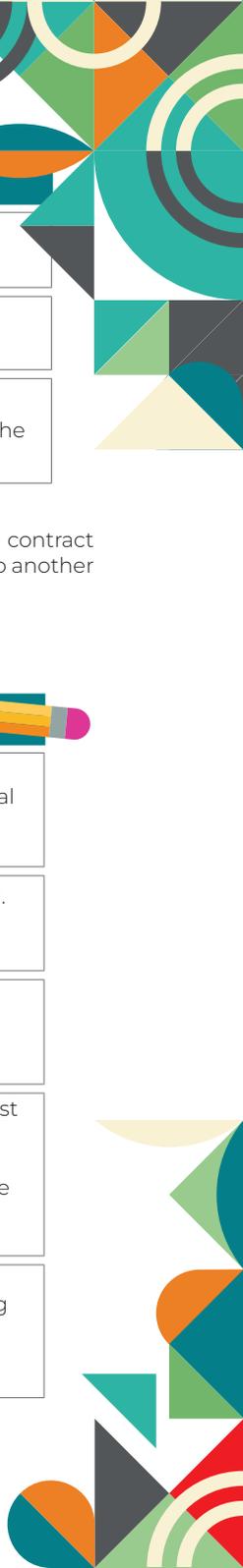
✓	Protection of your IPRs to be aligned with the business and marketing strategy of your company.
✓	Be sure to consider future growth and expansion of the business into other regions or countries as well as online. Where your trade mark is adapted or evolves in use, consider whether a new trade mark is required to be filed.
✓	Proper record keeping, in the creation of IPRs in the business as well as the use of the IPRs, which will support the evidence of goodwill acquired through use the IPRs.
✓	Review the agreements and contracts used within the business, such as employment or third-party contracts, to ensure they include appropriate provisions. These should cover confidentiality clauses, ownership, and title to IPRs created during employment, commissioned work, technical testing, and required disclosures. Consider including alternative dispute resolution clauses to address potential conflicts efficiently.



IPR USE CHECKLIST

✓	Monitor the market and competitors to identify possible infringements of your IPRs to take quick and proactive action.
✓	The enforcement of the IPRs is the responsibility of the IPR owner.
✓	Secure your supply chain and adopt and implement policies and procedures to manage the use and protection of IPRs in the supply chain.

- **Selling, transferring, or assigning IPRs:** An assignment is a written contract where an IPR owner (assignor) sells of the rights and title in the IPR to another party (assignee).



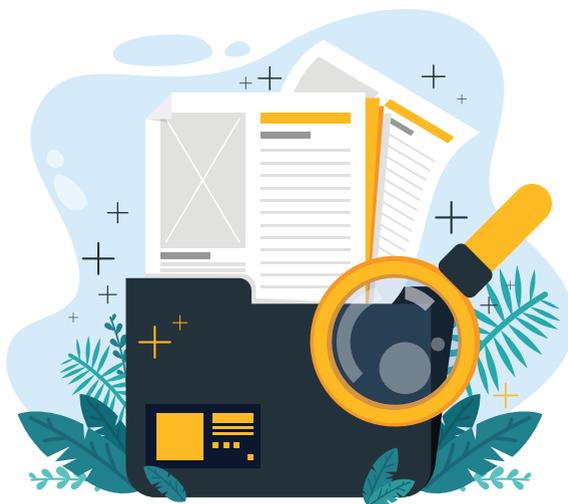
ASSIGNMENT CHECKLIST

✓	Ensure non-disclosure agreements (NDA) are in place before entering negotiations. The NDA will ensure that any confidential information disclosed during the negotiations remains confidential and cannot be used or disclosed.
✓	Check the status of the IPR, whether still pending or registered. Only a registered trade mark can be assigned. For pending applications, a substitution of applicant is recorded.
✓	Assess whether the sale of the IPR will have any restrictions on your future ability to trade or carry on business in relation to those goods or services covered by the IPR.
✓	The assignment or substitution of an applicant agreement must be in writing and should clearly specify the parties involved (noting that only the recorded owner of the IPR can assign the right). It should also clearly identify the IPRs being assigned, the payment terms, warranties, governing laws, and the effective date. The agreement must be signed.
✓	Check the applicable requirements for assigning and recording the transfer of the IPR to ensure the agreement complies with legal provisions for ownership transfer.

ASSIGNMENT CHECKLIST

✓	Any assignment agreement is required to be recorded in the relevant registry against the registered IPRs to be valid against third parties. If not recorded, it is only valid between the parties to the agreement.
✓	In determining the purchase price, consider the costs of securing and enforcing the IPRs, in addition to profits and the potential market value of the IPR.

- **Licensing IPRs:** A license is a contract where the IPR owner (licensor) provides permission for the use of the IPR by another person (licensee), in terms of the limits and conditions as set out in the agreement, usually with the payment of a royalty to the licensor for the right of such use.
 - **Type of license:** The business objectives and nature of the goods or services are likely to dictate the type of license granted:
 - **Exclusive:** Only the licensee can use the right, the licensor cannot use or license it further.
 - **Sole:** Licensor agrees not to grant further licenses to other third parties but retains the right to use it.
 - **Non-exclusive:** Both the licensor and licensee are entitled to use the right, and the licensor can enter into further license arrangements.





LICENSING CHECKLIST

✓	Non-disclosure agreements (NDA) are in place before entering negotiations. The NDA will ensure that any confidential information disclosed during the negotiations remains confidential and cannot be used or disclosed.
✓	Check the status of the IPR, whether still pending or registered.
✓	Assess whether the licensing of the IPR will have any restrictions on your future ability to trade or carry on business in relation to those goods or services covered by the IPR.
✓	The license agreement should be in writing and signed by at least the assignor. It must clearly outline the parties, the licensed IPRs, the terms and conditions, payment details, warranties, governing laws, and the effective date. For patents and designs, it should also address the treatment of future improvements.
✓	Check the relevant requirements applicable to the licensing and recordal of licenses of the particular IPR Registry to ensure the agreement follows the provisions of law for the lawful transfer of ownership.



TIP

Visit the CIPC website for a guide in commercialising your IPR: https://www.cipc.co.za/?page_id=1423

- **Franchising IPRs:** Franchising is a form of license where the IPR owner (franchisor) grants franchisees the right to use the brand, processes and related IPRs, in exchange for a fee (usually in the form of an initial fee and ongoing royalties), and where the franchisor offers, or is obliged to maintain an interest in the training and know-how of the business. The franchisee benefits from coordinated marketing efforts and a developed business system.

TIP



- **The Franchise agreement** is complex by its very nature and IPR owners seeking to franchise their business should seek professional advice and assistance in preparing the franchise agreement.

Franchise Association of South Africa (FASA) is an internationally recognised Franchise Association. The FASA website provides useful information on franchising in South Africa. FASA also offers a basic complaints and mediation service to its members free of charge: <https://www.fasa.co.za/>

- **Exchange control approvals:** The transfer of South African owned IPRs offshore is subject to South African Exchange Control Regulations, promulgated under the Currency and Exchanges Act No. 9 of 1933. Regulation 10(4) prohibits the export of capital or right to capital, which includes IPR, whether registered or not, without permission from the Exchange Control Authorities of the Reserve Bank (SARB).
 - All exchange control-related matters must be addressed through an Authorised Dealer, which is a registered bank authorised to deal in foreign exchange or an Authorised Dealer in foreign exchange with limited authority. Failure to comply may amount to a criminal offence, punishable by a fine and/or imprisonment.
- **Tax implications and considerations:** IPR owners need to be aware of the tax implications related to inter alia the development and creation of IPRs (R&D tax incentives, rebates, deductions of legal expenses), royalties derived from the licensing (royalties withholding tax requirements), or the sale of IPRs (IPRs are considered assets for capital gains tax considerations), as well as VAT. The company structure and ownership of IPRs within that structure should also be considered before deciding on the business structure, or whether IPRs are to be held in a holding company, licensed to companies within the group.

IMPORTANT



Expert legal and tax advice is urged when deciding on the structure of your business. Failure to consider tax implications can seriously affect the health of your business.

- **Valuation of IP:** The process of determining the monetary value of the company's IP assets, for a variety of reasons, including tax purposes, sale of business, mergers and acquisitions, transfer pricing and determination of damages suffered through IP right infringements.

Some of the reasons for conducting IP Valuations are:

- financial, such as M&A transactions, royalties and license agreements, or the value of a monopoly;
- financial Reporting as well as Tax considerations, such as impairment;
- legal, including damages for infringement; and
- any other strategic objectives.

TIP 

WIPO-Valuing Intellectual Property Assets offers additional information on IP valuations in practice and valuation methods: <https://www.wipo.int/sme/en/ip-valuation.html>

Different methods are adopted in determining the IP value, including:

- income method–value based on income derived.
- market method–price of IPR transferred in similar circumstances.
- cost method–calculating the cost of similar IP assets.
- relief-from-royalties method; and
- technology method (essentially an IP Portfolio Review).





2. IP PORTFOLIO MANAGEMENT AND STRATEGY

The oversight of IP assets is a core component of the business strategy. All aspects of IP should be integrated into the overall business strategy.

- **IP management** is complex, with several formalities and time requirements requiring close attention. External IP portfolio management, through the appointment of an identified IP specialist/company, is recommended for start-ups or developing businesses which do not have the internal specialist skills and expertise.

The external partner can provide safety in ensuring the necessary formalities are met, and provide an outside perspective and industry knowledge that will support your business plan. Even where you entrust the IP portfolio management to an external partner, it is imperative to ensure you have an internal system to track and manage your IP.

The checklist below, although not exhaustive, will provide a level of direction to manage your IP internally:



IP MANAGEMENT CHECKLIST

✓	IP Manager	Ensure that the responsibility for the creation and management of the IP strategy is delegated as a function of an individual or department.
✓	Confidentiality	Ensure that there are mechanisms to ensure confidential information is kept safe and limit the number of people exposed to this information through employment contracts or NDAs.

IP MANAGEMENT CHECKLIST

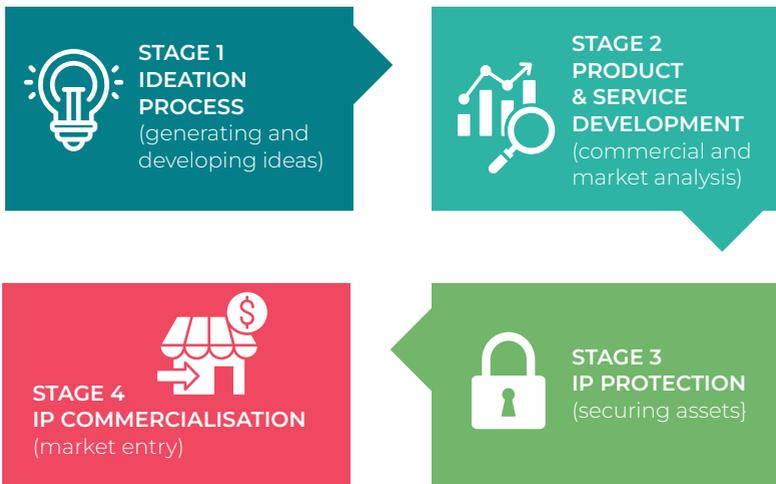
✓	Ownership	Identify the source of the IP and ensure you own the IP, particularly where working with third parties in the creation or development of the products or services. If you cannot own the IP, make sure you have a proper license agreement in place.
✓	Training	Educate your business partners and staff about IP, IPRS and its value to the organisation, their responsibilities, and steps to safeguarding IP.
✓	Mapping	Decide which parts of your business goods or service you want to protect, identify the IP and how best to use the IP.
✓	Objectives	Set out the goals for your IP strategy, considering the objectives set out in the business plan.
✓	Protection	Identify the IP and ensure properly protected and maintained through timeous renewals.
✓	Cost	Consider the costs of securing IP protection and enforcement measures, and ensure the costs are included in the business budget.
✓	Documenting	Create processes for recording, saving, and storing of IP, including evidence of use.
✓	Reporting	Decide on reporting requirements and intervals to ensure a proactive approach for new IP created.
✓	Growth	Consider the medium-term/long-term business strategy to identify future regions of importance to ensure that your IPRs are protected before you enter the new market.

- **IP strategy:** The IP strategy is a plan that assists businesses in managing and protecting their IPR with the goal of securing a competitive advantage using the relevant IPRs.

The IP strategy is an important part of the business plan to ensure that it aligns with the overall business goals and objectives, setting out how exactly you will develop, manage, protect, and commercialise your IP. The IP strategy will be influenced by several factors, such as the stage of business, industry, competitors, and the availability of recourses.

By providing a framework in the early stages of the business development, it will support the early protection of your IPRs and the buy-in and support of other stakeholders in the business.

- **WIPO's step-by-step IP Strategy Checklist for SMEs** WIPO's step-by-step IP Strategy Checklist for SMEs helps to prevent common pitfalls start-ups encounter. The checklist is divided into four parts that reflect the general stages of commercialisation, covering key tips for inclusion in each step of the strategy.⁸⁵



⁸⁵ WIPO IP Strategy Checklist for SMEs: <https://www.wipo.int/en/web/business/checklist>

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- **IP audits** are the review of the business IP, policies and agreements used to manage IP assets and manage risk. IP audits should be conducted at least once a year to identify the IP assets, identify which IP requires renewals or are no longer relevant to the business, review and check agreements and policies, and to manage risk.

The conducting of regular IP audits ensure that you adapt your IP strategy to the changing needs of the business. Where your IP is managed by an external partner, request an IP portfolio report of the IPRs they manage, to confirm the status of your IP, outstanding requirements, and required actions and related costs during the year.

Deadlines and due dates can be captured for action as an element of your business plan. An internal audit should also be conducted annually to ensure your IP strategy is still aligned with the business strategy. Quarterly objectives and requirements can be recorded for follow up and timeous action.

- **IP budgets:** Consider the costs of securing protection (filing, examination, prosecution, registration, renewals), and maintenance of IPRs. This can be requested from the external IP partner annually to support and assist with budgeting of foreseeable costs for the financial year. Change in circumstances and unforeseeable costs, such as infringements of the IPRs or foreign exchange rate fluctuations, should be catered for in the budget to ensure you have the means to take the necessary action to protect your IP in your business. By setting annual goals and objectives in IP enforcement strategies assists in providing an estimation of costs for the year.



TIP

It is recommended to include a buffer (10-20%) to cater for variances between budgeted and actual costs. Assess IP costs quarterly together with your business budget review to see whether any adjustments need to be made to meet the objectives and goals.



PART 5

RESOURCES

1. Glossary of terms and abbreviations
2. CIPC additional resources and information
3. IP Directory and Information
4. Main IP Laws, Regulations and Treaties



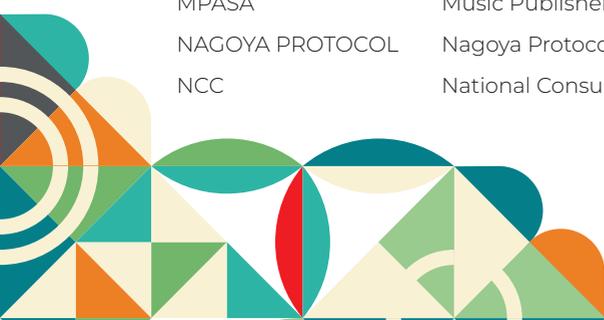
1. GLOSSARY OF TERMS & ABBREVIATIONS



ABS	Access Benefit Sharing
ADR	Alternative Dispute Resolution
AfCFTA	African Continental Free Trade Area
APSA	Agricultural Product Standards Act, 119 of 1990
ARB	Advertising Regulatory Board
ARIPO	African Regional Intellectual Property Organisation
BABS	Bioprospecting, Access and Benefit Sharing Regulations of 2008
BERNE CONVENTION	The Berne Convention for the Protection of Literary and Artistic Works of 1886
CAB	Copyright Amendment Bill
CAPASSO	Composers, Authors and Publishers Association
CBD	Convention on Biological Diversity
CG Act	Counterfeit Goods Act, 37 of 1997
CIPC	Companies and Intellectual Property Commission
CIPC IPOnline	CIPC Intellectual Property Online.
CPA	Consumer Protection Act, 68 of 2008
DALRO	Dramatic, Artistic and Literary Rights Organisation
DALRRD	Department of Agriculture, Land Reform and Rural Development
DEA	Department of Environmental Affairs
DSDB	Department of Small Business Development
DSI	Department of Science and Innovation
DST	Department of Science and Technology
DTIC	Department of Trade, Industry and Competition
ECT Act	Electronic Communications and Transactions Act, 25 of 2002
EPA	Economic Partnership Agreement
EU	European Union



FAO	Food & Agriculture Organisation
FASA	Franchise Association of South Africa
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GI	Geographical indication
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
GR	Genetic resources
IAP	Inventor Assistance Program
ICC	Inter Government Committee
IK Act	Protection, Promotion, Development and Management of Indigenous Knowledge Act, 2019
IKS	Indigeneous Knowledge Systems
IMPRA	Independent Music Performance Rights Associations
INTERPOL	International Criminal Police Organisation
IP	Intellectual Property
IPACSA	Intellectual Property Arbitration Centre, South Africa
IPI	Swiss Federal Institute of Intellectual Property
IPLAA	Intellectual Property Law Amendment Act
IPLC	Indigenous Peoples and Local Communities
IPR	Intellectual Property Rights
IPR-PFRD Act	Intellectual Property Rights from Publicly Financed Research and Development Act, 51 of 2008
ISPA	Internet Service Provider Association
IR	International Registration (trade marks)
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
LPA	Liquor Products Act
MPASA	Music Publishers' Association of South Africa
NAGOYA PROTOCOL	Nagoya Protocol on Access and Benefit-Sharing
NCC	National Consumer Commission



NEMBA	National Environmental Management Biodiversity Act, 10 of 2004
NIKSO	The National Indigenous Knowledge Systems Office
NIPMO	National Intellectual Property Management Office
OAPI	The Organisation Africaine de la Propriété Intellectuelle
PARIS CONVENTION	The Paris Convention for the Protection of Industrial Property of 1883
PASA	Publishers' Association of South Africa
PBR	Plant Breeders' Rights
PCT	Patent Cooperation Treaty, 1970
PFMA	Public Finance Management Act, 1 of 1999
PPAB	Performers' Protection Amendment Bill
PV	Plant variety rights
RISA	Recording Industry of South Africa
SADC	Southern African Development Community
SAIPL	South African Institute of Intellectual Property Law
SAMPA	South African Music Performance Rights Association
SAMRO	South African Music Rights Organisation
SARB	South African Revenue Bank
SARS	South African Revenue Services
SECO	Swiss State Secretariat of Economic Affairs
SEDA	Small Enterprise Development Agency
SEDA	Small Enterprise Development Agency
SEDFA	Small Enterprise Development and Finance Agency
SEFA	Small Enterprise Finance Agency
SMME	Small Medium and Micro Enterprises
SPII	Support Programme for Industrial Innovation
SSAIP	Swiss-South African Intellectual Property Project
TCE	Traditional Cultural Expression
the dtic	Department of Trade, Industry and Competition



TRIP	Technology and Human Resources for Industry Programme
TIA	Technology Innovation Agency
TK	Traditional Knowledge
TLD	Top-level domain
TM Act	Trade Marks Act, 194 of 1993
TRIPS AGREEMENT	Trade Related Aspects of Intellectual Property Rights
UPOV	International Conventions for the Protection of New Varieties of Plants
VAT	Value-added Tax
WCO	World Customs Organisation
WIPO	World Intellectual Property Office
WTO	World Trade Organisation



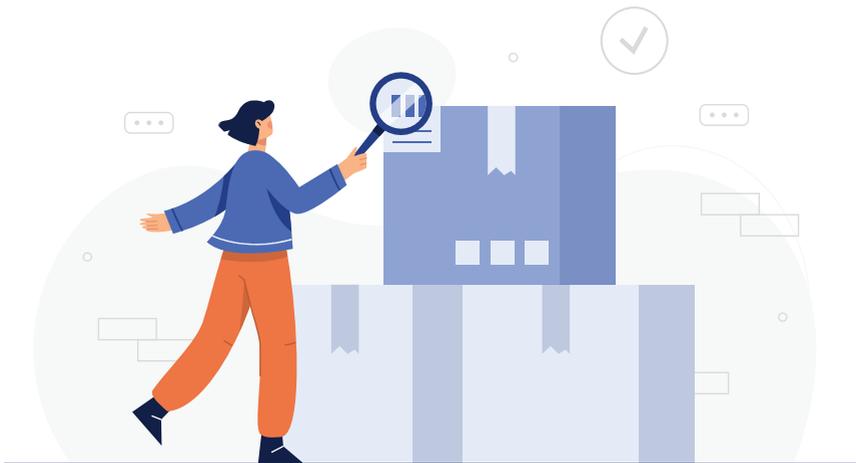
2. CIPC RESOURCES

RESOURCE TITLE	DESCRIPTION	LINK
Article	The Importance of Trade Mark Protection - August 2023	https://www.cipc.co.za/wp-content/uploads/2023/08/ARTICLE-THE-IMPORTANCE-OF-TRADE-MARK-PROTECTION-Aug-23.pdf
Article	The how, where and what of trade mark registration for SMMEs in South Africa: Debunking Common Misconceptions - Part 1 - 1 November 2023	https://www.cipc.co.za/wp-content/uploads/2023/11/TMK-SSME-ART-1-NOV-23.pdf
Article	The How, Where and What of Trade Mark Registration for SSMEs In South Africa Part 2: The Trade Mark Application Process - 2 December 2023	https://www.cipc.co.za/wp-content/uploads/2023/12/TMK-SSME-ART-2-DEC-23.pdf
Article	The How, Where and What of Trade Mark Registration for SSMEs In South Africa Part 3: Navigating registrability of trade marks (Fleurette Coetzee) 11 March 2024	https://www.thesmallbusinesssite.co.za/the-how-where-and-what-of-trade-mark-registration-for-smmes-in-south-africa-part-3-navigating-registrability-of-trade-marks/
Article	The How, Where and What of Trade Mark Registration for SSMEs In South Africa Part 3: What Happens Africa the Initial Trade Mark Application Process - 10 April 2024	https://www.thesmallbusinesssite.co.za/the-how-where-and-what-of-trade-mark-registration-for-smmes-in-south-africa-part-3-what-happens-after-the-initial-trade-mark-application-process/

RESOURCE TITLE	DESCRIPTION	LINK
Company Names	Defensive Names	https://www.cipc.co.za/?page_id=10473#:~:text=A%20defensive%20name%20may%20be.the%20protection%20of%20the%20name
Company Names	Companies Act, No. 71 of 2008: To Provide for the incorporation, registration, organisation and management of companies.	https://www.cipc.co.za/wp-content/uploads/Legal/Regulations/CompaniesAct71_2008.pdf
Co-operatives	Co-operatives Act 14 of 2005: To provide for information and registration of co-operatives, establishment of co-operatives advisory board, winding up of co-operatives and matters connected therewith	https://www.cipc.co.za/wp-content/uploads/Legal/Regulations/CooperativesAct14of2005v1.pdf
Copyright	Register copyright	https://www.cipc.co.za/?page_id=4586
Copyright	CIPC Copyright Forms & Fees	https://www.cipc.co.za/?page_id=4077
E-Filing User Registration Guide	Web client	https://iponline.cipc.co.za/Publications/IP%20eFiling%20User%20Regisration.pdf
Forms & Fees	Forms and applicable fees for IPR registration, company, co-operatives	https://www.cipc.co.za/?page_id=3786
Intellectual Property	Information on trade marks, patents, designs and copyright; commercialise your IP; enforcing your rights; IP E-Journal; Inventor Assistance Program	https://www.cipc.co.za/?page_id=1423

RESOURCE TITLE	DESCRIPTION	LINK
IP Legislation South Africa	CIPC administers all or parts of 15 pieces of legislation relating to corporate and intellectual property regulation	https://www.cipc.co.za/?page_id=2721
IP Management	Learn more on how to manage your IP	https://iponline.cipc.co.za/Static-Content/ManageIP.aspx
IPOne	A step by step guide on how to register for the electronic filing system (e-Filing) before accessing the functionalities and the services provided by CIPC.	https://iponline.cipc.co.za/
Life Cycle of trade marks	Representation of the steps from filing application for registration of trade mark to registration and renewal.	https://www.cipc.co.za/?page_id=4118#:~:text=A%20registered%20trade%20mark%20can,of%20the%20prescribed%20renewal%20fee
Nice Classification - Conflicting classes	Nice classification - conflicting classes of goods and services for search purposes	https://www.cipc.co.za/wp-content/uploads/2021/04/CONFLICTING_CLASSES_JAN_18.pdf
Nice Classification - 12th Edition	List of classes of goods and services - Nice classification 12th Edition - Version 2023	https://www.cipc.co.za/wp-content/uploads/2023/01/12-23-class-headings-expl-notes.pdf
Trade Mark Examination Guidelines	CIPC Guidelines on the examination of Trade Mark Applications - Insight into the practice of the Office of the Registrar of Trade Marks, Version 3A - August 2019	https://www.cipc.co.za/wp-content/uploads/2021/04/Guideline_on_the_Examination_of_Trade_Marks_by_the_South_African_Trade_Marks_Office_-_Version_3A_August_2019.pdf

RESOURCE TITLE	DESCRIPTION	LINK
Trade Marks General Information	Register Trade Marks: checklist for registration of a trade mark, lifecycle of a trade mark; classification of goods and services; examples of non-registrable trade marks; related links	https://www.cipc.co.za/?page_id=4118
Trade Marks, copyright, designs & patents	Link to Journal Publications on CIPC website	https://iponline.cipc.co.za/Publications/JournalPublications.aspx
Website	CIPC website providing eservice self-service tools and information, covering enterprise registration and maintenance, and protection of IPRs in South Africa, with useful resources and step-by-step guides	https://www.cipc.co.za



3. GENERAL RESOURCES

IP DIRECTORY & INFORMATION			
IPR	ORGANISATION	DESCRIPTION	LINK
ABS	NIKSO	About the NIKSO portal	https://nikso.dst.gov.za/about
ABS	DFFE	(DEA) acts as the clearing house and national focal point, for ABS in South Africa;	https://www.dffe.gov.za/access-and-benefit-sharing-babs-clearing-house-republic-south-africa
ABS	DFFE	Guidelines for Providers, Users & Regulators	https://www.dffe.gov.za/sites/default/files/legislations/bioprospecting_regulatory_framework_guideline.pdf
ADR	IPACSA	Arbitration centre in South Africa specialising in IP disputes	https://www.ipac-sa.co.za/
ADR	WIPO	Wipo Arbitration and Mediation Center	https://www.wipo.int/amc/en/
Advertising	ARB	Website providing details about ARB, Complaints, Codes, Rulings and contact details	https://www.arb.org.za/index.html
Advertising	ARB	Complaints regarding content of advertising: consumer and competitor complaints	https://www.arb.org.za/
Africa	ARIPO	ARIPO- African Regional IPR protection	https://aripo.org/
Africa	OAPI	OAPI - African Regional IPR protection	http://www.oapi.int/index.php/en/

IP DIRECTORY & INFORMATION

IPR	ORGANISATION	DESCRIPTION	LINK
Africa	AfCFTA	African Continental Free Trade Area	https://au-afcfta.org/
Commericalising IP	Reserve Bank	FAQ Exchange control related matters	https://www.resbank.co.za/en/home/what-we-do/financial-surveillance/FinSurv-FAQ#:~:text=The%20Exchange%20Control%20Regulations%20prohibit,in-directly%20exported%20from%20South%20Africa
Commericalising IP	WIPO - IP for business	About IP - IP for Business - Valuing IP Assets - guide on valuation of assets of business	https://www.wipo.int/sme/en/ip-valuation.html
Company Names	Companies Tribunal	Agency of the DTI providing speedy resolution of company disputes, incl company name disputes	https://www.companiestribunal.org.za/
Consumer Protection	NCC	The NCC website providing consumers information on provisions of CPA, legislation, Industry codes of conduct, e-servces registration and lodging of complaints	https://thencc.org.za/
Consumer Protection	NCC Complaints	Complaints - create a profile on eServices to file a complaint	https://thencc.org.za/complaints/
Consumer Protection	Guide to Consumer Rights	CPA - Guide to Consumer Rights & How to protect them	https://labourguide.co.za/general/the-consumer-protection-act-your-guide-to-consumer-rights-a-how-to-protect-them

IP DIRECTORY & INFORMATION			
IPR	ORGANISATION	DESCRIPTION	LINK
Co-operatives	Good Governance	Principles of Good Governance for Co-operatives	https://www.cipc.co.za/wp-content/uploads/2022/02/Coops_Governance_Principles.pdf
Copyright	Berne Convention	Member states	https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=15
Copyright	CAPASSO	Digital Rights Licensing Agency, which collects and distributes royalties to its members (music publishers and composers.)	https://www.capasso.co.za/
Copyright	CCSA	The Copyright Coalition of South Africa (CCSA) is a broadly representative group mainly comprised of local trade and industry associations	https://copyrightcoalition.co.za/
Copyright	DALRO	Licensing the use of published dramatic, artistic and literary copyrighted works and distributing royalties.	https://dalro.co.za/
Copyright	IMPRA	Independent Music Performance Rights Associations	https://www.impra.org.za/
Copyright	MPASA	Music Publishers' Association of South Africa	https://mpasaonline.co.za/#home-top
Copyright	PASA	Publishing Association of South Africa	https://publishsa.co.za/

IP DIRECTORY & INFORMATION

IPR	ORGANISATION	DESCRIPTION	LINK
Copyright	RISA	Recording Industry of South Africa	https://www.risa.org.za/website/about/
Copyright	SAMPRA	South African Music Performance Rights Association	https://www.sampra.org.za/about/
Copyright	SAMRO	South African Music Rights Organisation	https://www.samro.org.za/
Copyright	WGSA	Writers' Guild of South Africa	https://writersguildsa.org/
Counterfeit Goods	SARS	Prohibited, restricted and counterfeit goods	https://www.sars.gov.za/customs-and-excise/prohibited-restricted-and-counterfeit-goods/
Counterfeit Goods	SARS	SC-CC-28 Customs and Border Management - External Policy Counterfeit Goods 18 February 2021 (link to previous version 6 April 2010 - awaiting new link from SARS)	https://www.sars.gov.za/wp-content/uploads/Ops/Policies/SC-CC-28-Counterfeit-Goods-External-Policy.pdf
Counterfeit Goods	SARS	SC-CC-32 Prohibited and Restricted Goods - External Policy 10 September 2024	https://www.sars.gov.za/wp-content/uploads/Ops/Policies/SC-CC-32-Prohibited-and-Restricted-Goods-External-Policy.pdf
Cross Border	AfCFTA	AfCFTA website providing details about the objectives, trade areas, operational instruments, state parties and resources.	https://au-afcfta.org/

IP DIRECTORY & INFORMATION			
IPR	ORGANISATION	DESCRIPTION	LINK
Designs	WIPO	The Locarno Classification, established by the Locarno Agreement (1968), is an international classification used for the purposes of the registration of industrial designs.	https://www.wipo.int/export/sites/www/classifications/locarno/en/pdf/loc_9.pdf
Domain Names	Domain Disputes.co.za	.za Domain Dispute Resolution: SAIPL is accredited as a dispute resolution provider in terms of the .za Alternate Dispute Resolution Regulations.	https://www.domaindisputes.co.za/
Domain Names	ICANN	Uniform Domain Name Dispute-Resolution Policy	https://www.icann.org/resources/pages/policy-2024-02-21-en
Domain Names	ICC	ICANN new gTLD dispute resolution	https://iccwbo.org/dispute-resolution/dispute-resolution-services/adr/icann-new-gtld-dispute-resolution/#:~:text=All%20disputes%20arising%20out%20of,under%20international%20principles%20of%20law
Domain Names	ISPA	ISPA - Internet Service Providers Association - take-down notices	https://ispa.org.za/tdn/

IP DIRECTORY & INFORMATION

IPR	ORGANISATION	DESCRIPTION	LINK
Franchising	FASA	FASA - The Franchise Association of South Africa: membership association specialising in franchising and opportunities in South Africa. Complaint procedure for members	https://www.fasa.co.za/
Funding IP	TIA	Technology Innovation Agency - TIA offers various funding instruments to support the development of technologies and innovations.	https://www.tia.org.za/funding-instruments/
Funding IP	STP	Innovation and Technology funding instruments - SEDA Technology Programme (STP) - Incubation programme	https://www.thedtic.gov.za/financial-and-non-financial-support/incentives/seda-technology-programme/
Funding IP	SPII	Support Programme for Industrial innovation SPII	https://www.thedtic.gov.za/financial-and-non-financial-support/incentives/support-programme-for-industrial-innovation-spii/
Funding IP	THRIP	The Technology and Human Resources for Industry Programme (THRIP)	https://www.thedtic.gov.za/financial-and-non-financial-support/incentives/thrip/

IP DIRECTORY & INFORMATION			
IPR	ORGANISATION	DESCRIPTION	LINK
Funding IP	Seed Fund	Seed fund this funding funds applied research, technology development and pre-commercialisation.	https://www.thedtic.gov.za/financial-and-non-financial-support/incentives/seed-fund/
Funding IP	TIA	Technology Innovation Agency	https://www.tia.org.za/
Funding IP	UTFUND	The University Technology Fund (UTF) is the first fund of its kind for the African continent.	https://utfund.co.za/about/
Funding IP	III	The Institute of Inventors and Innovators offers important information, advice and guidance on all aspects of the invention process	https://iii.org.za/home/about-us/
Funding IP	The Innovation Hub	The Innovation Hub, the innovation agency of the Gauteng Province is a wholly owned subsidiary of the Gauteng Growth and Development Agency.	https://www.theinnovationhub.com/
GI	Afripi	Manual for Geographical Indications in Africa	https://afripi.org/sites/default/files/2023-05/AfriPI_GI_Manual_EN.pdf
GI	DALRRD	GI- Agricultural products Standard Acts	https://old.dalrrd.gov.za/doaDev/sideMenu/foodSafety/doc/Training%20Hardout%20under%204th%20tab.pdf

IP DIRECTORY & INFORMATION

IPR	ORGANISATION	DESCRIPTION	LINK
Innovation & patent - funding	HSRC	Support for Innovation in South Africa	https://hsrc.ac.za/innovation-support-in-south-africa/
International	WIPO	Madrid System - International trade mark registration	https://www.wipo.int/web/madrid-system
International	WIPO	PCT - International Patent System	https://www.wipo.int/pct/en/
IP-General	the dtic	Intellectual Property Policy of The Republic of South Africa - Phase 2	https://www.gov.za/sites/default/files/gcis_document/201808/ippolicy2018-phase1.pdf
IP-General	INTERPOL	Tackling organised crime in South Africa	https://www.interpol.int/en/Who-we-are/Member-countries/Africa/SOUTH-AFRICA
IP-General	SAIIPL	South African Institute of Intellectual Property Law	https://saiipl.co.za/
IP-General	WCO	World Customs Organisation	https://www.wcoomd.org/
IP-General	WIPO	WIPO- About IP	https://www.wipo.int/about-ip/en/#:~:text=Intellectual%20property%20(IP)%20refers%20to,and%20images%20used%20in%20commerce
IP-General	WIPO	WIPO Directory - South Africa	https://www.wipo.int/directory/en/details.jsp?country_code=ZA
IP-General	WIPOLEX	WIPO Lex - Database - South Africa	https://www.wipo.int/wipolex/en/members/profile/ZA
IP-General	WTO	WTO - website	https://www.wto.org/index.htm

IP DIRECTORY & INFORMATION			
IPR	ORGANISATION	DESCRIPTION	LINK
IP-General	WTO	WTO Directory - South Africa	https://www.wto.org/english/thewto_e/countries_e/south_africa_e.htm
IP-General	GATT	GATT - The General Agreement on Tariffs and Trade (GATT 1947)	https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm
Patents	PCT	PCT effective in South Africa from 16 March 1999	https://www.wipo.int/treaties/en/registration/pct/
Plant Breeders' Rights	DALRRD	Apply for plant breeders' rights	https://www.gov.za/services/plant-production/plant-breeders-rights
Public funded IP	Innovation Bridge	Department of Science and Innovation: The Innovation Bridge Portal - intellectual and human capital and heightened activity that exists within the African ecosystem	https://innovationbridge.info/ibportal/about-us?qad_source=1&qclid=CjwKCAjwod-C2BhAHEiwAE67h-JOS_4A79U14GK-wF3veg_CTX-NCNcVHeFCGI92h-jk8ZnTytrBfaDG2f-BoCceAQAvD_BwE
Public funded IP	NIPMO	National Intellectual Property Management Office	https://www.theinnovationhub.com/hub-residents/biosciences/agencies/national-intellectual-property-management-office-res9
SMMES	SEDFA	Small Enterprise Development and Finance Agency (merger of SEDA and SEFA)	https://www.sedfa.org.za/

IP DIRECTORY & INFORMATION

IPR	ORGANISATION	DESCRIPTION	LINK
SMMEs	SMESA	Guide on Intellectual Property - Updated 5 July 2024	https://smesouthafrica.co.za/sme-guides/guide-on-intellectual-property/
SMMEs	DSDB	Department of Small Business Development	https://www.dsbd.gov.za/article/department-small-business-development
TK	DST	Dept Science & Technology: Indigeneous Knowledge Systems	https://www.dst.gov.za/images/pdfs/IKS_Policy%20PDF.pdf



4. MAIN IP LAWS, REGULATIONS & TREATIES

MAIN IP LAWS, REGULATIONS & TREATIES		
TOPIC	RESOURCE TITLE	LINK
ABS	Convention on Biological Diversity	https://www.cbd.int/convention
ABS	The Nagoya Protocol on Access and Benefit Sharing	https://www.cbd.int/abs/default.shtml
ABS	National Environmental Management: Biodiversity Act 10, of 2004	https://www.gov.za/sites/default/files/gcis_document/201409/a10-04.pdf
Ambush marketing	Merchandise Marks Amendment Act, 61 of 2002	https://www.gov.za/sites/default/files/gcis_document/201409/a61-020.pdf
Consumer Protection	Consumer Protection Act, 68 of 2008	https://www.thedtic.gov.za/wp-content/uploads/Consumer_Protection_Act.pdf
Co-operatives	Co-operatives Administrative regulations, 2016 and Principles of Good Governance	https://www.cipc.co.za/wp-content/uploads/2022/02/Co-operatives_Regulations.pdf
Co-operatives	Co-operatives Amendment Act, 6 of 2012	https://www.cipc.co.za/wp-content/uploads/2022/02/2013_Co-ops_Act.pdf
Copyright	Copyright Act, 98 of 1978	https://www.gov.za/documents/copyright-act-16-apr-2015-0942
Copyright	Copyright Regulations, 1978	https://www.cipc.co.za/wp-content/uploads/2020/10/Copyright_Regulations.pdf
Copyright	Copyright Amendment Bill	https://www.gov.za/sites/default/files/gcis_document/201811/copyright-amendment-bill-b13b-2017.pdf
Copyright	Performers Protection Act, 11 of 1967	https://www.gov.za/documents/performers-protection-act-22-feb-1967-0000
Copyright	Performers Protection Bill	https://static.pmg.org.za/B24B-2016_Performers_Protection.pdf

MAIN IP LAWS, REGULATIONS & TREATIES

TOPIC	RESOURCE TITLE	LINK
Copyright	Registration of Cinematography Films Act, 62 of 1977	https://www.gov.za/sites/default/files/gcis_document/201504/act-62-1977.pdf
Copyright	Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)	https://www.wipo.int/treaties/en/ip/berne/summary_berne.html
Counterfeit Goods	Counterfeit Goods Act, 37 of 1997	https://www.gov.za/documents/counterfeit-goods-act
Counterfeit Goods	Customs & Excise Act, 91 of 1964: Sections 18(1A), 43, 88(1)(a), 90 and 113A	https://www.gov.za/sites/default/files/gcis_document/201505/act-91-1964s.pdf
Designs	Designs Regulations, 1998	https://www.cipc.co.za/wp-content/uploads/2020/10/Design_Regulations.pdf
Designs	Designs Act, 195 of 1992	https://www.gov.za/documents/designs-act
Domain Names	ECTA: Regulations - Alternative Dispute Resolution	https://www.gov.za/documents/electronic-communications-and-transactions-act-regulations-alternative-dispute-resolution-0
GI	Agricultural Products Standard Act, 119 of 1988	https://www.gov.za/documents/agricultural-product-standards-act-6-mar-2015-1127
GI	Agricultural Products Standard Act: Regulations - Protection of Geographical indications used on agricultural products intended for sale in South Africa	https://www.gov.za/documents/notices/agricultural-product-standards-act-regulations-protection-geographical
Gis	Lisbon Agreement for the Protection of Appellations of Origin and their International Registration	https://www.wipo.int/treaties/en/registration/lisbon/
Industrial Rights	Paris Convention for the Protection of Industrial Property (as amended September 28, 1979)(Official translation)	https://www.wipo.int/wipolex/en/text/288514

MAIN IP LAWS, REGULATIONS & TREATIES

TOPIC	RESOURCE TITLE	LINK
Intellectual Property	Agreement on the Trade-Related Aspects of Intellectual Property Rights	https://www.wto.org/english/docs_e/legal_e/27-trips.pdf
Labelling	Liquor Products Acts, 60 of 1989	https://www.gov.za/sites/default/files/gcis_document/201503/act-60-1989.pdf
Online	Electronic Communications & Transactions Act, 25 of 2002	https://www.gov.za/sites/default/files/gcis_document/201409/a25-02.pdf
Patents	Patents Act, 57 of 1977	https://www.gov.za/documents/patents-act-9-apr-2015-0827
Patents	Patents Regulations, 1977	https://www.cipc.co.za/wp-content/uploads/2020/10/Patent_Regulations.pdf
Patents	WIPO - Summary of the Patent Cooperation Treaty (PCT) (1970)	https://www.wipo.int/treaties/en/registration/pct/summary_pct.html
Plant Breeders' Rights	Plant Breeders' Rights Act, 15 of 1976	https://www.gov.za/sites/default/files/gcis_document/201504/act-15-1976.pdf
Plant Breeders' Rights	Plant Improvement Act, 53 of 1976: Guidelines for Hemp for Cultivation for Agricultural and Industrial Purposes	http://www.daff.gov.za/images/Quick%20Links/HempCannabis/Guidelines/HP-GD-001%20Guidelines%20for%20Hemp%20002.pdf
Plant Breeders' Rights	UPOV – To provide and promote an effective system of plant variety protection,.	https://www.upov.int/portal/index.html.en
Prohibited Marks/ Protected events	Merchandise Marks Act, 17 of 1939	https://www.thedtic.gov.za/wp-content/uploads/merchandise_act.pdf
Public funded IP	Intellectual Property Rights from Publicly Financed Research and Development Act, 51, 2008	https://www.dst.gov.za/images/pdfs/IPR%20Act%20of%202008.pdf
SMMEs	National Small Business Amendment Act, 29 of 2002	https://www.gov.za/sites/default/files/gcis_document/201409/a29-04.pdf

MAIN IP LAWS, REGULATIONS & TREATIES

TOPIC	RESOURCE TITLE	LINK
SMMEs	National Small Business Amendment Act, 26 of 2003.	https://www.gov.za/sites/default/files/gcis_document/201409/a26-03.pdf
SMMEs	National Small Enterprise Amendment Act, 21 of 2022	https://www.gov.za/sites/default/files/gcis_document/202407/50965national-smallenterpriseamendmentact212024.pdf
State owned IP	Unauthorised use of State Emblems Act, 37 of 1960	https://www.gov.za/documents/unauthorized-use-emblems-act-19-may-1961
TK	Policy Framework for the Protection of Indigenous traditional Knowledge through the Intellectual Property System and the Intellectual Property Laws Amendment Bill, 2008	https://www.gov.za/sites/default/files/gcis_document/201409/31026552.pdf
Trade Marks	Merchandise Marks Act, 17 of 1940	https://www.gov.za/documents/merchandise-marks-act-17-apr-1941-0000
Trade Marks	Trade Mark Regulations	https://www.cipc.co.za/wp-content/uploads/2022/02/Regulations_v1_trade_mark.pdf
Trade Marks	Trade Marks Act, 194 of 1993	https://www.gov.za/documents/trade-marks-act
Trade Marks, copyright	Consumer Protection Act, 68 of 2007	https://www.gov.za/sites/default/files/gcis_document/201409/321864670.pdf
Trade Marks, copyright, advertising, consumer protection	Consumer Protection Regulations, 2007	https://thenc.org.za/wp-content/uploads/2020/11/CPA-REGS.pdf
Trade Marks, copyright, designs & patents	Intellectual Property laws Amendment Act, 38 of 1996	https://www.gov.za/sites/default/files/gcis_document/201409/a38-97.pdf

MAIN IP LAWS, REGULATIONS & TREATIES

TOPIC	RESOURCE TITLE	LINK
Trade marks, copyright, prohibited marks	Counterfeit Goods Act, 37 of 1996	https://www.gov.za/documents/counterfeit-goods-act
Traditional Knowledge	Protection of Traditional Knowledge Bill, 2012	https://www.gov.za/sites/default/files/gcis_document/201409/36354gen376.pdf

