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Africa's IPR dilemma

By CIPESAFOCUS
Writer

Africa appears to be in a catch-22 as far as Intellectual Property Rights (IPR) are concerned. Should it have tighter regimes so as to attract foreign investments and encourage technology transfer? Or should it have softer IPR policies that encourage greater access to knowledge and technology?

It may seem like a chicken-and-egg scenario but in the meantime stakeholders in the East African region are moving to create IPR policies that reward innovation and encourage foreign investors to put their money in the region. Critical to the debate on science and technology capacity has always been the issue of IPR protection.

"In recent public policy discourse, there are those who argue that developing countries such as those of East Africa need to provide strong IPR protection regimes as a means of stimulating technological innovations, facilitating technology transfer and attracting Foreign Direct Investment," said Ronald Naluwairo, Research Associate at the Uganda-based Advocates Coalition for Development and Environment (ACODE).

"Yet others have challenged this assertion pointing out that the utility of IPR policy, legal or administrative regimes lies in their ability to harness IPR as a policy instrument for achieving clearly set development policy objectives," he added.

Intellectual property refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. The World Intellectual Property Organisa-



Students at the Kampala International University computer lab: Technological developments are influencing thinking on IPR policies

tion (WIPO) divides intellectual property into two categories. One is Industrial Property (IP), which includes inventions (patents), trademarks, industrial designs.

The other is Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and scul-

tures, and architectural designs.

Some experts say with globalisation and changing technological environments fuelled by continuous innovation, we are currently living in an information society where a wealth of knowledge and information is available at our fingertips simply by searching the many Internet and World Wide Web sites, databases, and other information services.

They add however that the continuous knowledge creation and technology developments also provide opportunities for multinational corporations to search for markets and profits by employing Intellectual Property as an essential tool of wealth creation. Hence, the overarching concern is the manner in which ideas and knowledge, both old and new, are being rapidly enclosed, privatised and translated into intellectual property that is available for a fee.

Naluwairo said in spite of the many years of IPR protection since independence, east African countries like many others in Africa, have registered minimum success in harnessing the potential of IPR protection to stimulate the development of science and technology at the national level.

However, in East Africa the coming into force of

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Burundi: more telecom providers but taxes stay high

By Sadi Niyungeko

The Burundi government's telecoms liberalisation process which begun in 1997 has seen a rise in telecoms operators to four, but the sector says high taxes are constraining the sector's growth. Bandwidth prices are also exceedingly high, rendering the Internet out of reach for the vast majority of Burundians.

While the country is pegging its hopes for lower connectivity to initiatives like the East African Submarine Cable System (EASSy), the return of peace to the country is also expected to contribute to a boom in telecoms, as foreign firms are showing greater interest in investing in Burundi's telecommunications sector.

From one state-owned landline operator in 1997, Burundi currently has four companies that offer

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This issue of CIPESAFOCUS leads with an article on the debate African countries are currently engaged in concerning Intellectual Property Rights (IPR) policies they need to have in place to enable innovation, technology transfer and easier access to knowledge and technology. No doubt, creators of knowledge need reward and a degree of protection for their works, which in turn encourages innovation.

Some studies have shown that countries where policies strongly protect intellectual property are more likely to attract foreign investments - particularly from the US and the UK that are strong believers in tight IPR policies. Indeed, as Kenyan Industrial Property Institute official Anderson Sange says, "A regime of expanded property rights protection holds considerable promise for promoting long term economic growth and technological innovation among developing countries," including those in eastern and southern Africa.

EDITORIAL: The IPR debate

But in an era of globalisation and rapid technological developments, there are concerns that tight IPR regimes could create "monopolies on information". In fact, the terms intellectual protectionism and intellectual poverty are increasingly being used to refer to tight intellectual property policies and their likely effects.

The 'Communications Rights in the Information Society (CRIS)' programme, a campaign that seeks to ensure that communication rights are central to the information society, argues that IPR has affected the public's access to knowledge in the public domain and to copyrighted works, limited legitimate opportunities for cultural appropriations, stifled learning, creativity and innovation, thus placing curbs on the democratisation of knowledge. It adds that IPR has also infiltrated into the domain of food and medicine, threatening the sustainability of indigenous knowledge and biodiversity.

For Africa, which is in dire need of affordable technology and knowledge, tight IPR controls could then be seen as a loser. But, separately, Africa also needs to take seriously the issue of protection of traditional knowledge and folklore, since those with access to technology and who are knowledgeable about IPR can easily turn what is community knowledge into their patented 'for sale' product. In this debate traditional knowledge covers literary, artistic or scientific works, song, dance, medical treatments and agricultural techniques, while folklore covers the breadth of expressions of culture.

More telecom providers but taxes stay high in Burundi

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only cellular services, namely Télécel, Africell, Spacotel and Onamob. But there is still only one landline provider - the state owned Onatel which also offers cellular services and is among the country's five Internet Service providers along with Usan, Cbinet, Speednet and Mapatro.

Onamob covers the whole country, followed by Télécel which operates in 15 of Burundi's 17 provinces. Africell covers nearly half of the country while Spacotel covers less than a quarter of the country. Landline services are available in most parts of the country though infrastructure is concentrated in urban areas.

All the five ISPs are based in the capital Bujumbura, and are private-owned save for Onatel. Whereas there are many cyber cafes in Bujumbura, very few rural areas have access to Internet services. In fact, besides Bujumbura only two other towns, Gitega and Ngozi, have public internet access points.

In addition to the shortage of internet infrastructure beyond the three major towns, government officials point out that there is acute shortage of skills in using the Internet, partly because Burundi has a very low literacy rate. Besides, tariffs for services are very high. For instance a one minute local call costs on average 230 Burundi Francs (about \$0.23) on the Onamob network or 360 Burundi Francs (\$0.37) on Télécel for calls across networks.

Within the same network tariffs are lower, varying from 180 Burundi Francs at Onamob to 271 Burundi Francs on Telecel. The landline tariffs vary from 21 francs per three minutes within Bujumbura area to 50 francs to call rural areas.

All the cellular companies except Spacotel provide short message services. The tariffs vary from 20 francs at Onamob and Africell to 24 francs at Telecel. But significantly, SMS can only be exchanged among subscribers to the same cellular company. While mobile operators have reached an agreement on calls interconnection, they have failed to agree on SMS exchange.

The law providing for the liberalisation of Burundi's telecoms industry was enacted in 1999, and as a result Télécel, Africell and Spacotel opened shop in 2000.

In 2001, ISPs were licenced, and interest in the sector has been rising with the return of peace to the country. South Africa-based

Econet Wireless, in May bought a 65 percent stake in one of the Burundian cellular providers and says it will sink \$27 million in the operation.

But telecoms operators complain about the high taxes imposed on them. "The government requires a lot of taxes on telecom equipment. Just imagine 20 percent taxes on mobile phones and computers," said Damien Hamenyimana, the Technical Director at Télécel, who urges the state to either cancel the taxes or slash them significantly.

Other investors in the ICT industry agree with him and suggest that government should put in place a clear national ICT policy to

guide the development of the sector.

"Telecom equipment are very expensive," remarks Janvier Simba, the Technical Director at Spacotel. "The government should reduce taxes in order to allow subscribers to call and to use the internet at lower prices," he added.

"... Just imagine 20 percent taxes on mobile phones and computers," said Damien Hamenyimana, the Technical Director at Télécel, who urges the state to either cancel the taxes or slash them significantly.



Internet access remains a preserve of just a few towns in Burundi

Africa's IPR dilemma

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the Treaty Establishing the East African Community has presented a fresh opportunity for a more systematic dialogue on the necessary conditions to harness the power of IPR protection to achieve the objectives of national science and technology capacity.

The treaty commits Kenya, Tanzania and Uganda to undertake joint actions to among other things create a conducive environment for the promotion of science and technology within the community and to harmonise policies on commercialisation of technologies and promotion of intellectual property rights.

For this reason, the region in June 2006 set an agenda for harnessing IPR to stimulate scientific innovation, technology transfer and the application of technological solutions embedded in IPR to address problems faced by the three countries. This was at the 'East Africa High Level Legal-Scientific Conference on Intellectual Property Rights and Development' held in Kampala and organised by ACODE, Kenya Industrial Property Institute (KIPI), Tanzania Bureau of Registration and Licencing Agency (BRELA) and the Registrar General's Office of Uganda.

Prof. Patricia Kameri-Mbote of the Faculty of Law at the University of Nairobi, Kenya, noted that governance of IPRs and science and technology in regional countries were anchored in various institutions and ministerial protocols, which called for harmonisation.

There are strong views that international technological transfer between the developed and developing countries are often influenced by IPR regimes in recipient countries. One writer, Cynthia Churchwell, has asserted that the competitiveness of many multinational companies depends on their ability to transfer intellectual property and other intangible assets to their worldwide production processes.

Accordingly, multinational companies consider such factors as the presence or lack of IP rights in a given country before deciding whether or not to transfer their technology to such a

country in order to safeguard against other people infringing on their rights, Churchwell said.

"Strong IPRs, if properly structured, can increase economic growth and encourage technological development," Sylvance Anderson Sange of KIPI said at the Kampala conference. "There exist a connection in the relationship between IPRs regime, trade and economic growth. A regime of expanded property rights protection holds considerable promise for promoting long term economic growth and technological innovation among developing countries."

Strengthening and harmonising IPRs in East Africa would hence result in greater access to foreign technology, a boost in the domestic innovation process, which would in turn create employment and boost research and development capacity in the region, Sange argued.

But while Sange's argument might be plausible, there is an increasing call for the need to protect intellectual property but also to relax copyright laws so that developing countries can generate content, access a wide array of knowledge, and even become better at technological innovation. Creative Commons – the global movement that seeks to encourage easier access to and fair use of intellectual property – is among those that take this view. So are the proponents of the Open ICT ecosystems, including the Free and Open Source Software (FOSS) movement.

But, as the view espoused by Leonia Kishebuka of the Tanzanian Business Regulations and Licencing Agency shows, the matter remains contentious: "Weak legal regimes in most developing countries can be a serious barrier to technology transfer arrangements and technology development," says Kishebuka. "This can lead to those who possess proprietary technology to avoid transferring technologies to countries with weak IP law and enforcement systems."

Organisations working on IPR issues

- **World Intellectual Property Organisation (WIPO)**, www.wipo.int, Geneva. WIPO is an international organisation "dedicated to promoting the use and protection of works of the human spirit." These works, or intellectual property, are expanding the bounds of science and technology and enriching the world of the arts. WIPO is a specialised agency of the United Nations and administers 23 international treaties dealing with different aspects of intellectual property protection. It has 183 member states.
- **World Trade Organisation (WTO)**, www.wto.int. WTO's agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) entails mechanisms for enforcing IP protection.
- **African Regional Industrial property Organisation (ARIPO)**, www.aripo.org. ARIPO, which is headquartered in Zimbabwe, was established "to pool the resources of its member countries in industrial property matters together in order to avoid duplication of financial and human resources". An agreement for its establishment was signed in Lusaka in 1976 and came into force on February 15 1978. From that date, the UN Economic Commission for Africa and WIPO acted as its joint secretariat, until the body established its own secretariat in Zimbabwe.
- **Advocates Coalition for Development and Environment (ACODE)**, Uganda, www.acode-u.org. ACODE's mission is to "influence development and governance policies for the promotion of social justice in Eastern Africa" through policy research and advocacy.
- **Kenya Industrial Property Institute**, <http://www.kipi.go.ke/>. Its mandate is to administer industrial property rights, provide technological information, training in industrial property rights to the public and promote inventiveness and innovativeness for accelerated technological, industrial and social economic development in Kenya. It was created by government under the trade and industry ministry in 2002.
- **Tanzania Bureau of Registration and Licencing Agency (BRELA)**, www.brela-tz.com. Its role is to ensure that businesses operate in accordance with the laid down regulations and sound commercial principles. It was established by government in 1999.

Calendar of Events

July 19-21, The Second Rwanda National ICT Convention, Organised by AITEC under the auspices of the Rwanda Information Technology Authority (RITA), the event focuses on meeting the challenges of putting electronic government into practice - Kigali, Rwanda.

July 21-23, 2006, Exploiting IT for Economic Development, University of Ghana - Legon, Ghana. Conference organised by the Conference on Information Technology and Economic Development, a community outreach effort of the Information Institute

24 - 25 July, 2006, Regulators and policy makers discuss end of SAT 3 national monopolies. Organised by APC, AFRISPA, CATIA, CRASA and Balancing Act, the meeting will discuss what happens when the national monopolies granted to African SAT3 consortium members come to an end in June 2007. - Johannesburg, South Africa.

Sept 11-15, 10th Highway Africa conference, www.highwayafrica.ru.ac.za - Grahamstown, South Africa.

October, 25-27, 2006, World Congress on Communication for Development, Organised by the World Bank's Development Communication Division, The Food and Agriculture Organization of the United Nations and The Communication Initiative, - Rome, Italy.

December 4-8, 2006, ITU Telecom World 2006, Asia-world-Expo, - Hong-Kong.

About CIPESA

CIPESA is one of two programmes established under the Catalysing Access to Information and Communications Technologies in Africa (CATIA) initiative and funded by the UK Department for International Development (DfID). It aims to increase the capacity of East and Southern African stakeholders to participate in international ICT policy-making.

The programme focuses on stimulating discussion and policy analysis on international ICT issues. This is to enable African interests to be more effectively represented in international policy fora, and international policy decisions to be more effectively translated into positive outcomes in Africa. For more information see www.cipesa.org.

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Kenya: Two cables better than one

The reasoning in government circles in Nairobi is that if the EASSy submarine cable to be laid from South Africa through Mombasa to Port Sudan developed a problem, Kenyan business would suffer, hence the need for different alternatives.

By Wairagala Wakabi

Kenya has finally said what many people had been suspecting: that it prefers to be linked to the international fibre optic network via more than one cable. Indeed, as stakeholders to the East African Submarine Cable System (EASSy) were meeting in Kenya's capital Nairobi ahead of signing a construction and maintenance contract for the cable, it emerged that the country had on the drawing board two cables parallel to EASSy.

Mutahi Kagwe, the Information and Communications Minister, said Kenya wanted to have multiple undersea cables to link its coastal city of Mombasa to the rest of the world, as this would spur competition, lead to affordable services and more reliable communication services. While EASSy stakeholders were in Nairobi, Kenya repeated its threats (initially made in May 2006) that if a contractor to construct EASSy was not engaged within the week, it would start on its individual cable.

That meeting endorsed the Special Purpose Vehicle that will build and own EASSy and formed a task force to sort out outstanding issues like interconnection arrangements to hinterland countries. Signing of the construction and maintenance agreement was set for mid July 2006. Kenya has indicated it is ready (possibly through the state-run Telkom Kenya) to construct an \$80 million link between Mombasa and Fujiara in the United Arab Emirates. At the same time, Kenya Data Networks (KDN), which like Telkom Kenya is a signatory to the EASSy memorandum of understanding, has entered a deal with India's Flag Telecom to construct a \$115 million link between Mombasa and Yemen. Flag Telecom owns and manages an extensive optic fibre network spanning Asia, Europe, the Middle East and USA, and hopes to connect Mombasa by September 2007 to a network it is erecting in the Gulf region.

Kenya argues that it needs to be price competitive and to have reliable connectivity in order to attract investors in its ICT industry. "These undersea cables will ensure that our communication costs are the same or less than those of India, because competition for ICT centres is global and when we go marketing ourselves, cost is a crucial factor," Kagwe said on July 5 while commissioning the Telkom Kenya Nairobi-Mombasa fibre optic network.

Kenya is positioning itself for the global outsourcing business, to compete with countries like India and Seychelles, and its policy makers are



Mr Mutahi Kagwe - Information and Communications Minister

"... Kenya wants to have multiple undersea cables to link its coastal city of Mombasa to the rest of the world, as this will spur competition, lead to affordable services and more reliable communication services."

keen to point out that Bangladesh with a population of 20 million people has three cables that are fully utilised. The country is steadfastly growing its internal fibre optic systems, with Telkom Kenya launching its 550 km Nairobi-Mombasa terrestrial cable in early July 2006 at a cost of \$9 million. KDN launched their own earlier this year and are extending it around the country. Both KDN and Telkom Kenya are extending their fibre optics to the border with Uganda.

The reasoning in government circles in Nairobi is that if the EASSy submarine cable to be laid from South Africa through Mombasa to Port Sudan developed a problem, Kenyan business would suffer, hence the need for different alternatives.

Kai Wulff, the KDN managing director, told *The Standard* that they were seeking eligible private and public telecommunication infrastructure companies to join their venture. "We are talking to everyone who is willing to invest money in the project. That includes infrastructure companies like Safaricom, Telkom, and Celtel Kenya as well as retail users like Internet Service Providers," he said.

Some KDN officials have indicated that since they will cover 1,000 kms of EASSy's intended route, their initiative would reduce the costs of actualising the 9,900 km EASSy. But other observers said that was not a certainty since there was no understanding that EASSy would hook onto the KDN-Flag system. Besides there are concerns that ventures like KDN's could charge landlocked countries like Burundi, Rwanda and Uganda huge amounts of money to hook onto their systems that are built outside of the EASSy arrangement.

Meantime, Kenya is also taking steps towards licensing additional Internet service providers, and local loop and data network operators, in a bid to make telecommunications service more affordable. Licensing of a second national operator that will offer both landline and mobile services is currently underway to end the longstanding monopoly of Telkom Kenya.