

**KIGALI INDEPENDENT UNIVERSITY (ULK)**

**SCHOOL OF LAW**

**DEPARTMENT OF LAW**

**LEGAL IMPACT OF INTELLECTUAL PROPERTY RIGHTS ON CREATIVE INDUSTRIES AND ECONOMIC DEVELOPMENT UNDER RWANDAN LAW.**

This is a final project submitted in partial fulfilment of the academic requirements for the award of the Bachelor's Degree in Law (LLB) at Kigali Independent University (ULK).

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## **APPROVAL**

This dissertation entitled “: **LEGAL IMPACT OF INTELLECTUAL PROPERTY RIGHTS ON CREATIVE INDUSTRIES AND ECONOMIC DEVELOPMENT UNDER RWANDAN LAW**”, was written and submitted by Mystere Scholastique MUTIMANAMA in partial fulfilment of the requirements for the award of Bachelor’s Degree in Law (LLB) is hereby accepted and approved.

Supervisor: Me BAHATI VEDASTE

Signature .....

Date .....

## **DECLARATION**

I, MYSTERE SCHOLASTIQUE MUTIMANAMA, hereby declare that this Final Research Report is my original work performed in partial fulfillment of the academic requirements for the award of the degree Bachelor of Laws (LLB) at Kigali Independent University. I also declare that this Report has not been previously presented elsewhere for an academic award.

All references made from other people's work are acknowledged in the footnote and bibliography.

Student signature.....

## **DEDICATION**

I dedicate this work to my family especially my Dad and Mom as well friends who supported me through the whole journey. I also thank all ULK academic Staff for this practical and delightful requirement, and all my lecturers for their support and commitment.

I also present my specific gratitude towards my supervisor Mr. BAHATI VEDASTE for tirelessly, and patiently committing to helping me work hard and ensuring that I end up with such a presentable piece.

Again, to all of you, thank you so much.



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Blessings!

Mystere Scholastique MUTIMANAMA

## **List of abbreviations and acronyms**

**ARIPO:** African Regional Intellectual Property Organization

**Art:** Article

**DMCA:** Digital Millennium Copyright Act

**DVDs:** Digital Video Discs

**EAC:** East African Community

**ICT:** Information, Communication and Technology

**IP:** Intellectual Property

**IPRs:** Intellectual property rights

**JPO:** Japan Patent Office

**No:** Number

**OAPI:** Organisation Africaine de la Propriété Intellectuelle

**RDB:** Rwanda Development Board

**RURA:** Rwanda Utilities Regulatory Authority

**TRIPS:** Agreement on Trade-Related Aspects of Intellectual Property Rights

**UNCTAD:** United Nations Conference on Trade and Development

**UNDP:** United Nations Development Programme

**UPOV:** International Union for the Protection of New Varieties of Plants

**US:** United States

**USPTO:** United States Patent and Trademark Office

**V.: Versus**

**VPN:** Virtual Private Network

**WCT:** WIPO Copyright Treaty

**WIPO:** World Intellectual Property Organization

**WPPT:** WIPO Performances and Phonograms Treaty

**WTO:** World Trade Organization

## **I. GENERAL INTRODUCTON**

### **I.1 Background of the Study**

Intellectual property rights (IPRs) have become increasingly important in fostering innovation, creativity, and economic growth worldwide. At the international level, the establishment of the World Trade Organization (WTO) in 1995 marked a significant milestone in global IPR protection. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) set minimum standards for IPR protection among WTO members, aiming to harmonize intellectual property laws globally<sup>1</sup>. This agreement has had far-reaching implications for creative industries, as it mandates protection for copyrights, trademarks, and patents, which are crucial for sectors such as music, film, and technology<sup>2</sup>.

The World Intellectual Property Organization (WIPO) has also played a pivotal role in shaping global IPR policies. Through treaties like the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), the organization has addressed digital-age challenges faced by creative industries<sup>3</sup>. These treaties have extended copyright protection to software and databases, recognizing the evolving nature of creative works in the digital era.

At the regional level, Africa has made significant strides in establishing legal mechanisms for IPR protection. The African Regional Intellectual Property Organization (ARIPO) and the Organisation Africaine de la Propriété Intellectuelle (OAPI) have been instrumental in harmonizing IPR laws across the continent<sup>4</sup>. These organizations have facilitated the registration and protection of patents, trademarks, and industrial designs, thereby supporting the growth of creative industries in member states.

In East Africa, the East African Community (EAC) has recognized the importance of IPR protection for regional economic development. The EAC Customs Union Protocol emphasizes the need for partner states to cooperate in intellectual property matters<sup>5</sup>. This regional approach has

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<sup>1</sup> See Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 1994, art 1.

<sup>2</sup> See Peter K Yu, 'The International Enclosure Movement' (2007) 82 *Indiana Law Journal* 827, 834-835.

<sup>3</sup> See WIPO Copyright Treaty 1996, art 4; WIPO Performances and Phonograms Treaty 1996, art 5.

<sup>4</sup> See Tana Pistorius, 'The Impact of Intellectual Property Law and Policy on Sustainable Development' (2007) 32 *South African Yearbook of International Law* 376, 380-382.

<sup>5</sup> See Protocol on the Establishment of the East African Customs Union 2004, art 43.

encouraged the harmonization of IP laws among member states, potentially creating a more conducive environment for creative industries to thrive across borders.

Rwanda has made significant progress in establishing a legal framework to protect intellectual property (IP) and promote economic development, particularly within the creative industries. The government, through the Rwanda Development Board (RDB), has facilitated the registration and protection of various forms of IP. Rwanda is a signatory to several international IP treaties, including the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property, which provide comprehensive frameworks for the protection of literary and artistic works and industrial property, respectively<sup>6</sup>.

In addition to these treaties, Rwanda has ratified other important international agreements that address specific IP issues.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO): Rwanda, as a WTO member, is bound by TRIPS, which sets minimum standards for IP protection, including copyrights, trademarks, and patents. This agreement plays a crucial role in harmonizing Rwanda's IP laws with global standards<sup>7</sup>

Rwanda has ratified The WIPO Copyright Treaty (WCT), and the WIPO Performances and Phonograms Treaty (WPPT): Both treaties, administered by the World Intellectual Property Organization (WIPO), address challenges in the digital era by extending copyright protection to digital works, including software and databases. Rwanda's ratification of these treaties demonstrates its commitment to aligning its IP laws with international standards<sup>8</sup>.

Rwanda is a member of the International Union for the Protection of New Varieties of Plants (UPOV), which offers protection for plant breeders' rights. This is crucial for agricultural innovation and economic development by ensuring that breeders are incentivized to develop new plant varieties<sup>9</sup>.

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<sup>6</sup> See Berne Convention for the Protection of Literary and Artistic Works (as amended on 28 September 1979).

<sup>7</sup> See TRIPS Agreement, arts. 9-39

<sup>8</sup> See WIPO Copyright Treaty (adopted 20 December 1996).

<sup>9</sup> See WIPO Performances and Phonograms Treaty (adopted 20 December 1996).

Rwanda is a member of ARIPO and is bound by its protocols, such as the Harare Protocol, which deals with the protection of patents, utility models, and industrial designs. The Banjul Protocol on trademarks also harmonizes trademark registration and protection across member states, fostering regional cooperation and encouraging cross-border innovation.

Despite these international commitments and legal mechanisms, significant challenges persist in the effective implementation and enforcement of intellectual property rights in Rwanda.

Rwanda, as a member of both the WTO and the EAC, has made significant efforts to align its intellectual property laws with international and regional standards. The country enacted the Law on the Protection of Intellectual Property in 2009, which provides a comprehensive framework for protecting various forms of intellectual property<sup>10</sup>. This law covers patents, utility model certificates, industrial designs, trademarks, copyrights, and related rights, demonstrating Rwanda's commitment to fostering innovation and creativity.

## **I.2 Interest of the study**

The section 1.2 discusses the interests of the study. It entails personal interest, scientific interest as well as the academic interest.

### **I.2.1 Personal interest**

Personally, this study will booster my knowledge about Intellectual property rights, processes of IP registrations and how that would booster an economic development of my country which will also allowed me to be free by the time I will be willing to invest in such a field, I will be more updated to the information that will help me develop my skills, my art without any kind of doubt that my artwork can be enacted by someone else without my concern, and will also increase my research skills due to the fact that I will do my best to bring the best out of it just for my own good and for the readers of my dissertation.

Generally, through the extensive research and writing process, I hopefully believe I will become an expert in my chosen field of law in generally and specifically my topic, which will help me to clearly understand the effect Intellectual property rights this deep dive, allows me to develop a comprehensive understanding that few others may possess.

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<sup>10</sup>Law N°31/2009 of 26/10/2009 on the Protection of Intellectual Property (Rwanda), Official Gazette n° 50 of 14/12/2009.

### **1.2.2 Academic interest**

Academically this study will help the readers and especially the other students who will refer to it in the period they will refer to it while making their own dissertations because it clearly mentions every detail of how a dissertation should look like. In addition, this study may be used by different readers who are curious about criminal procedure, how to link it up with the decision-making in criminal procedure.

Additionally, this study will allow me and all the readers to dig deeply into a specific area of law as provocation specifically as my concentration area that interests me and the readers the most. This specialization helps everyone academically to develop a thorough understanding of the legal principles, theories, and precedents.

### **1.2.3 Scientific interest**

Scientifically this study will specify to the reader the extent that provocation can be pleaded as a defense in criminal law the fairness and implementation of the possible existing legal provisions and legislations mostly with the aid of different case laws and other writings.

## **1.3 Delimitation of the study**

Generally, the study is delimited in three ways. Delimitation in time, in space and in domain

### **I.3.1 Delimitation of time**

Concerning time, the study will undergo analysis the Rwandan law on intellectual property vis-à-vis its implementation starting from 2024 as it is the year of the completion of this research.

### **I.3.2 Delimitation of Domain**

The domain of this study is the intellectual property as part of private law, since it will propose solutions that are the aspects of the private law.

### **I.3.3 Delimitation of space**

The study is delimited to the Rwandan intellectual property law.

## **I.4 Problem Statement**

Rwanda has made significant progress in establishing a legal framework to protect intellectual property (IP) and promote economic development, particularly within the creative industries. The government, through the Rwanda Development Board (RDB), has facilitated the registration and

protection of various forms of IP and has ratified international IP treaties such as the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property<sup>11</sup>. Despite these initiatives, several practical and critical gaps remain, affecting the effective implementation and enforcement of intellectual property rights<sup>12</sup>.

A study by the Ministry of Trade and Industry in 2018 highlighted that many local artists, particularly in music and film, lack awareness of their IP rights, resulting in widespread infringement and piracy. The case of *Rwanda Cinema Centre v. Pirated Copies Distributors* is a notable example, where local filmmakers experienced substantial financial losses due to unregulated distribution of pirated DVDs across Kigali<sup>13</sup>. Despite the available legal framework under the Law No. 31/2009 of 26/10/2009 on the Protection of Intellectual Property in Rwanda, art. 18, enforcement was ineffective due to a lack of specialized IP enforcement agencies and the failure to impose stringent penalties on offenders<sup>14</sup>.

Furthermore, Rwanda's creative industries suffer from the absence of specialized intellectual property courts and limited expertise among judges and legal professionals in handling IP cases. This has led to inconsistent application of the law. For instance, in the case of *RDB v. Creative Industry Innovator* (2019), an artist faced delays and inadequate legal interpretation regarding copyright infringement, resulting in uncertainty for both local and international investors<sup>15</sup>.

The lack of judicial specialization in IP law also leads to challenges in proving infringement and damages, which creates a discouraging environment for creative industry professionals. Without specialized knowledge, judges often rely on general legal principles rather than on IP-specific statutes and precedents, resulting in unpredictable outcomes. This uncertainty was evident in the case of *Rwandan Music Association v. Unauthorized Music Distributor* (2020), where the court's ruling on fair use versus infringement left several ambiguities, creating challenges for future enforcement<sup>16</sup>.

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<sup>11</sup> See Berne Convention for the Protection of Literary and Artistic Works (*as amended on 28 September 1979*).

<sup>12</sup> See Paris Convention for the Protection of Industrial Property (*as amended on 28 September 1979*).

<sup>13</sup> See *Rwanda Cinema Centre v. Pirated Copies Distributors* [2018] Rwandan High Court.

<sup>14</sup> See Law No. 31/2009 of 26/10/2009 on the Protection of Intellectual Property in Rwanda, Official Gazette n° 50 of 14/12/2009 art. 18

<sup>15</sup> See *RDB v. Creative Industry Innovator* [2019] Rwandan Commercial Court.

<sup>16</sup> See *Rwandan Music Association v. Unauthorized Music Distributor* [2020] Rwandan High Court.



Given these persistent issues, this study critically analyzes the gaps in Rwanda's current IP legal framework, evaluating its effectiveness in fostering innovation and economic growth. This analysis includes examining how IP laws could be more stringently enforced, how legal professionals could be better trained, and how public awareness could be enhanced to fully leverage the creative economy's potential.

### **1.5 Research Questions**

2. What are the challenges faced in trying to implement and enforce intellectual property rights in Rwanda's creative industries, and how do these challenges impact economic growth?
3. What are the potential legal and institutional mechanisms needed to address the existing gaps in Rwanda's intellectual property regime and enhance its contribution to the creative economy?

### **1.6 Hypothesis**

Pursuant to the research questions above, the following hypothesis is framed:

1. The enforcement of intellectual property rights in Rwanda's creative industries is significantly challenged by factors such as piracy, lack of awareness among local creators, limited expertise among legal professionals, and inconsistent application of existing laws. These challenges have a direct negative impact on economic growth by discouraging investment and reducing the economic potential of the creative industries.
2. There are significant legal and institutional gaps in Rwanda's intellectual property regime. Addressing these gaps through specialized intellectual property courts, enhanced capacity-building for legal professionals, and more robust public awareness campaigns will be essential for strengthening the IP framework and enhancing its contribution to Rwanda's creative economy.

### **1.7 Objectives of the study**

The section 1.7 provides two categories of the research objectives which are the general objective and the specific objectives.

### **I.7.1 General Objective**

The general objective of this research is to explore the legal impacts of intellectual property rights on creative industries and economic development under Rwandan law.

### **I.7.2 Specific objectives**

The research objective of this study are of threefold:

1. To investigate the challenges faced that hinder the effective implementation of Intellectual property rights related legal instruments
2. To suggest the potential legal and institutional mechanisms that are needed to address the issue of poor implementation of the Rwandan laws in line with the intellectual property rights.

### **I.8 Research methodology**

The part I.8 demonstrates the research methodology that will be applied so as to gather all the needed information in line with the topic. It discusses them in two categories. The research techniques and the research methods.

#### **I.8.1 Research Techniques**

The section I.8.1 indicates how the researcher will use the Documentary techniques in conducting collecting the information

##### **I.8.1.1 Documentary Techniques**

The documentary technique will involve gathering and analyzing existing legal documents, case law, and scholarly works on intellectual property rights (IPRs). By consulting relevant treaties such as TRIPS and the Berne Convention, as well as Rwanda's specific IP legislation and court rulings, this method will help in understanding how the legal framework supports or hinders the creative industries in Rwanda. The analysis of these documents will provide the foundation for identifying gaps in enforcement and proposing recommendations for improvement.

#### **I.8.2 Research Methodology**

The section I.8.2 provides on Research methodology. It indicates that the researcher will use Analytical and Exegetic Methods.

### **I.8.2.1 Analytical Method**

The analytical method will critically assess the effectiveness of Rwanda's IP laws in promoting innovation and economic growth. By breaking down legal provisions and comparing Rwanda's IP framework with international standards, this method will uncover inconsistencies in the enforcement of these laws. Through a comparative analysis of local and global IP systems, the study will reveal how Rwanda's IP laws can be optimized for better protection of creative industries.

### **I.8.2.2 Exegetic Method**

The exegetic method will be employed to interpret and explain the provisions of Rwanda's intellectual property laws in a deeper legal context. By examining specific articles of the Law on the Protection of Intellectual Property (No. 31/2009) and international agreements such as TRIPS, the exegetic approach will clarify the intent behind these laws and their practical implications. This method will also highlight how certain provisions could be misunderstood or misapplied, leading to enforcement challenges. Through legal interpretation, this method will provide insights into how the laws can be better implemented to serve the interests of the creative industries and promote economic development.

## **I.9 Subdivision of the study**

The study will be composed of three main chapters in addition to the general introduction and the general conclusion and recommendations:

Chapter One will be all about the theoretical and conceptual framework of intellectual property rights. It will tackle the global evolution of IP laws, the role of international organizations like WIPO, and regional mechanisms such as ARIPO. The chapter will also address how these frameworks have influenced the development of IP laws in Rwanda, with a focus on copyright, trademarks, patents, and their relevance to creative industries.

Chapter Two will be all about the challenges faced in implementing and enforcing intellectual property laws in Rwanda. This chapter will explore the gaps in Rwanda's legal and institutional frameworks, such as limited public awareness, piracy, and the lack of specialized IP courts. It will also highlight case studies, including *Rwanda Cinema Centre v. Pirated Copies Distributors*, to demonstrate the practical challenges faced by creative industry stakeholders.

Chapter Three will be all about the potential legal and institutional mechanisms necessary to address the challenges identified in Chapter Two. This chapter will propose solutions such as the establishment of specialized IP courts, capacity building for legal professionals, and public awareness initiatives. These measures aim to improve the enforcement of IP laws, protect creators, and encourage economic growth through innovation in Rwanda's creative sectors.

## **CHAPTER 1: THEORETICAL AND CONCEPTUAL FRAMEWORK**

### **1.1 Introduction**

Intellectual property rights (IPRs) have become increasingly significant in the global economy, playing a crucial role in fostering innovation, creativity, and economic development. This chapter aims to establish a solid theoretical and conceptual foundation for understanding the legal impact of IPRs on creative industries and economic development in Rwanda. By examining key definitions, theoretical frameworks, and relevant legal structures at international, regional, and national levels, we can better contextualize the challenges and opportunities facing Rwanda's IP regime.

The creative industries, which encompass sectors such as music, film, literature, and visual arts, are particularly dependent on robust IP protection. These industries not only contribute to cultural enrichment but also serve as significant drivers of economic growth. In Rwanda, as in many developing countries, the intersection of IPRs, creative industries, and economic development presents both challenges and opportunities. Understanding this complex relationship is essential for formulating effective policies and legal frameworks that can harness the potential of intellectual property to stimulate creativity, attract investment, and drive economic progress.

### **Definitions of Key Terms**

The section 1.2 provides the definitions of the key concepts that are in line with the Intellectual property rights.

#### **1.2.1 Intellectual Property Rights**

Intellectual property rights are legal protections granted to creators and inventors for their intellectual creations. These rights aim to encourage innovation by providing exclusive rights to the creators for a specified period.

According to the World Intellectual Property Organization (WIPO), intellectual property refers to "creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce"<sup>17</sup>.

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<sup>17</sup> See WIPO, 'What is Intellectual Property?' <https://www.wipo.int/about-ip/en/> accessed 9 September 2024

The World Trade Organization (WTO) defines intellectual property rights as "the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time"<sup>18</sup>

In the Rwandan context, the Law on the Protection of Intellectual Property defines intellectual property as "the rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields"<sup>19</sup>.

### **1.2.2 Creative Industries**

Creative industries are sectors of the economy that are based on individual creativity, skill, and talent, and which have the potential to create wealth and jobs through the generation and exploitation of intellectual property.

According to UNESCO, creative industries are "those industries which have their origin in individual creativity, skill and talent and which have a potential for wealth and job creation through the generation and exploitation of intellectual property"<sup>20</sup>.

The United Nations Conference on Trade and Development (UNCTAD) defines creative industries as "the cycles of creation, production and distribution of goods and services that use creativity and intellectual capital as primary inputs"<sup>21</sup>.

In Rwanda, the National Policy on Creative Arts and Industries defines creative industries as "those industries which have their origin in individual creativity, skill and talent and which have a potential for wealth and job creation through the generation and exploitation of intellectual property, including handicrafts, visual arts, performing arts, audio-visuals, design and creative services"<sup>22</sup>.

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<sup>18</sup> See WTO, 'What are intellectual property rights?' [https://www.wto.org/english/tratop\\_e/trips\\_e/intell\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intell_e.htm) accessed 9 September 2024.

<sup>19</sup> See Law N°31/2009 of 26/10/2009 on the Protection of Intellectual Property (Rwanda), Official Gazette n° 50 of 14/12/2009 art 2.

<sup>20</sup> See UNESCO, 'Creative Industries' <https://en.unesco.org/creativity/sites/creativity/files/digital-library/What%20Do%20We%20Mean%20by%20CCI.PDF> accessed 9 September 2024.

<sup>21</sup> See UNCTAD, 'Creative Economy Report 2010' (2010) 8.

<sup>22</sup> See Ministry of Sports and Culture, 'National Policy on Creative Arts and Industries' (Government of Rwanda 2015) 5S

### **1.2.3 Economic Development**

Economic development refers to the process by which a nation improves the economic, political, and social well-being of its people.

According to the World Bank, economic development is "the qualitative change and restructuring in a country's economy in connection with technological and social progress<sup>23</sup>".

The United Nations Development Programme (UNDP) defines economic development as "the process of expanding people's choices by expanding their capabilities and functioning<sup>24</sup>".

In the context of Rwanda's Vision 2050, economic development is defined as "the process of structural transformation that allows sustained growth in productivity, job creation, and living standards<sup>25</sup>".

### **1.3 Theoretical Framework**

The theoretical underpinnings of intellectual property rights are crucial for understanding their role in promoting creativity, innovation, and economic development. This section examines three primary theories that provide justification for intellectual property protection: the utilitarian theory, the labor theory, and the personality theory.

#### **1.3.1 Utilitarian Theory of Intellectual Property**

The utilitarian theory, also known as the incentive theory, posits that intellectual property rights are necessary to incentivize innovation and creativity. This theory argues that without legal protection, creators and inventors would have little motivation to invest time and resources into developing new ideas, as others could freely copy and profit from their work<sup>26</sup>.

In the context of creative industries, the utilitarian theory suggests that copyright and related rights encourage artists, writers, and other creators to produce new works by ensuring they can benefit financially from their creations. For instance, in the music industry, copyright protection allows

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<sup>23</sup> See World Bank, 'What is Economic Development?' <https://www.worldbank.org/en/topic/economicpolicy> accessed 9 September 2024.

<sup>24</sup> See UNDP, 'Human Development Report 2020' (2020) 6.

<sup>25</sup> See Ministry of Finance and Economic Planning, 'Vision 2050' (Government of Rwanda 2015) Official Gazette n° 19 of 11/05/2015 art12.

<sup>26</sup> See William M Landes and Richard A Posner, 'An Economic Analysis of Copyright Law' (1989) 18 The Journal of Legal Studies 325, 326.

musicians to earn royalties from their compositions and recordings, thereby providing an economic incentive for continued artistic production<sup>27</sup>.

### **1.3.2 Labor Theory of Property**

The labor theory of property, primarily associated with John Locke, argues that individuals have a natural right to the fruits of their labor. When applied to intellectual property, this theory suggests that creators deserve exclusive rights to their intellectual creations because they have invested their time, effort, and resources into producing them<sup>28</sup>.

In Rwanda's creative industries, the labor theory could justify strong protection for traditional cultural expressions and handicrafts. Artisans who invest significant time and skill in creating intricate designs or unique products could claim a natural right to control the use and distribution of their creations<sup>29</sup>.

### **1.3.3 Personality Theory of Intellectual Property**

The personality theory, often attributed to Hegel, views intellectual property as an extension of the creator's personality. This theory argues that creative works are expressions of the author's self and should be protected to safeguard the creator's personhood<sup>30</sup>.

This theory is particularly relevant to moral rights in copyright law, which protect the integrity of creative works and the right of attribution. In Rwanda, as in many other jurisdictions, authors have the right to claim authorship of their work and to object to any distortion, mutilation, or other modification of their work that would be prejudicial to their honor or reputation<sup>31</sup>.

These theories provide a conceptual basis for understanding the rationale behind intellectual property protection and its potential impact on creative industries and economic development. They also offer insights into how different aspects of IP law might be justified or criticized, depending on the theoretical perspective adopted.

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<sup>27</sup> See Ruth Towse, 'Copyright and Economic Incentives: An Application to Performers' Rights in the Music Industry' (2000) 52 *Kyklos* 369, 371-372.

<sup>28</sup> See Justin Hughes, 'The Philosophy of Intellectual Property' (1988) 77 *Georgetown Law Journal* 287, 296-300.

<sup>29</sup> See Chidi Oguamanam, 'Localizing Intellectual Property in the Globalization Epoch: The Integration of Indigenous Knowledge' (2004) 11 *Indiana Journal of Global Legal Studies* 135, 140-142.

<sup>30</sup> See Margaret Jane Radin, 'Property and Personhood' (1982) 34 *Stanford Law Review* 957, 958-959.

<sup>31</sup> See Law N°31/2009 of 26/10/2009 on the Protection of Intellectual Property (Rwanda), *Official Gazette* n° 50 of 14/12/2009, art 195.



## **1.4 International and Regional Legal Framework**

The international and regional legal frameworks for intellectual property rights form the foundation upon which national IP systems are built. These frameworks aim to harmonize IP protection across borders, facilitate international trade, and promote innovation on a global scale. For Rwanda, understanding and engaging with these frameworks is crucial for developing a robust and internationally compatible IP system.

### **1.4.1 TRIPS Agreement**

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is one of the most comprehensive international agreements on intellectual property. As a member of the World Trade Organization (WTO), Rwanda is bound by the provisions of TRIPS<sup>32</sup>. The agreement sets minimum standards for various forms of intellectual property regulation and is administered by the WTO.

TRIPS covers copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs of integrated circuits, and protection of undisclosed information<sup>33</sup>. For Rwanda's creative industries, TRIPS provides a framework for protecting literary and artistic works, performances, and broadcasts. It also ensures that Rwandan creators can seek protection for their works in other WTO member countries.

### **1.4.2 WIPO Treaties**

The World Intellectual Property Organization (WIPO) administers several key treaties that are relevant to creative industries. Rwanda is a party to several WIPO-administered treaties, including the Berne Convention for the Protection of Literary and Artistic Works and the WIPO Copyright Treaty<sup>34</sup>.

The Berne Convention, which Rwanda joined in 1984, provides creators with the means to control how their works are used, by whom, and on what terms<sup>35</sup>. It is particularly relevant for Rwanda's

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<sup>32</sup> See WTO, 'Rwanda and the WTO' [https://www.wto.org/english/thewto\\_e/countries\\_e/rwanda\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/rwanda_e.htm) accessed 9 September 2024.

<sup>33</sup> See Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 1994, art 1.

<sup>34</sup> See WIPO, 'WIPO-Administered Treaties: Rwanda' [https://www.wipo.int/treaties/en/ShowResults.jsp?country\\_id=147C](https://www.wipo.int/treaties/en/ShowResults.jsp?country_id=147C) accessed 9 September 2024.

<sup>35</sup> See Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended on September 28, 1979).

literary, music, and film industries, as it ensures automatic protection of works in all member countries without the need for registration.

The WIPO Copyright Treaty, to which Rwanda acceded in 2015, extends copyright protection to the digital environment, addressing issues such as the distribution of copyrighted works over the internet<sup>36</sup>. This treaty is crucial for Rwanda's emerging digital creative industries, providing a legal framework for protecting online content and digital innovations.

### **1.4.3 African Regional Intellectual Property Organization (ARIPO)**

At the regional level, Rwanda is a member of the African Regional Intellectual Property Organization (ARIPO)<sup>37</sup>. ARIPO aims to pool the resources of its member countries in industrial property matters, ensuring more effective administration and management of IP rights.

For Rwanda's creative industries, ARIPO provides a streamlined process for obtaining patent and trademark protection across multiple African countries. This can be particularly beneficial for Rwandan businesses looking to expand their operations or protect their brands in other African markets.

### **1.4.4 East African Community (EAC) Protocols**

As a member of the East African Community, Rwanda is also subject to regional protocols that affect intellectual property rights. The EAC has been working towards harmonizing IP laws and policies among its member states to facilitate regional trade and investment<sup>38</sup>.

The EAC Customs Union Protocol, for instance, emphasizes the need for partner states to cooperate in intellectual property matters<sup>39</sup>. This regional approach can potentially create a larger market for Rwanda's creative industries, allowing for easier protection and enforcement of IP rights across East Africa.

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<sup>36</sup> See WIPO Copyright Treaty 1996.

<sup>37</sup> See ARIPO, 'Member States' <https://www.aripo.org/member-states/> accessed 9 September 2024.

<sup>38</sup> See East African Community, 'Intellectual Property Rights' <https://www.eac.int/intellectual-property-rights> accessed 9 September 2024.

<sup>39</sup> See Protocol on the Establishment of the East African Customs Union 2004, art 43.

These international and regional frameworks provide the context within which Rwanda's national IP laws operate. They offer both opportunities and obligations, shaping how Rwanda can develop its IP system to support its creative industries and drive economic development.

## **1.5 Rwandan Legal Framework**

Rwanda's legal framework for intellectual property rights has evolved significantly over the past two decades, reflecting the country's commitment to fostering innovation, protecting creativity, and promoting economic development. This section examines the key components of Rwanda's IP legal framework, with a focus on their relevance to creative industries.

### **1.5.1 Law on the Protection of Intellectual Property (2009)**

The cornerstone of Rwanda's IP legal framework is the Law on the Protection of Intellectual Property, enacted in 2009<sup>40</sup>. This comprehensive legislation covers various aspects of intellectual property, including patents, utility model certificates, industrial designs, trademarks, copyrights, and related rights.

For creative industries, the copyright provisions of this law are particularly significant. The law protects literary and artistic works, including books, musical compositions, audiovisual works, and computer programs<sup>41</sup>. It grants authors exclusive rights to reproduce, distribute, and communicate their works to the public, as well as moral rights such as the right of attribution and the right to object to derogatory treatment of their work<sup>42</sup>.

The law also provides for the protection of related rights, which are crucial for performers, producers of phonograms, and broadcasting organizations<sup>43</sup>. This protection is essential for Rwanda's music and film industries, ensuring that various stakeholders in the creative process can benefit from their contributions.

### **1.5.2 Other Relevant National Laws and Policies**

In addition to the primary IP law, several other legal instruments and policies contribute to Rwanda's IP framework and its impact on creative industries:

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<sup>40</sup> See Law N°31/2009 of 26/10/2009 on the Protection of Intellectual Property (Rwanda), Official Gazette n° 50 of 14/12/2009.

<sup>41</sup> *ibid* art 5.

<sup>42</sup> See *ibid* art 195, 197.

<sup>43</sup> *ibid* art 211-213.

a) The National Intellectual Property Policy (2018): This policy aims to create an enabling environment for the generation, protection, and commercialization of intellectual property in Rwanda. It emphasizes the role of IP in driving innovation and economic growth, with specific provisions for supporting creative industries<sup>44</sup>.

b) The ICT Law (2016): This law includes provisions relevant to digital aspects of creative industries, such as the protection of computer programs and databases<sup>45</sup>. It also addresses issues of cybersecurity and electronic transactions, which are increasingly important for digital creative content.

c) The Competition and Consumer Protection Law (2012): While not directly an IP law, this legislation plays a role in regulating fair competition and preventing the abuse of intellectual property rights in the marketplace<sup>46</sup>. It ensures that IP rights do not become tools for anti-competitive practices, which is crucial for maintaining a healthy ecosystem for creative industries.

d) The Investment Code (2015): This law provides incentives for investments in various sectors, including creative industries. It includes provisions for protecting intellectual property rights of investors, which can be particularly attractive for international collaborations in the creative sector<sup>47</sup>.

e) The Special Economic Zones Law (2011): This legislation establishes special economic zones where businesses, including those in creative industries, can benefit from various incentives. It includes provisions for enhanced IP protection within these zones, potentially creating hubs for creative and innovative enterprises<sup>48</sup>.

These laws and policies work in conjunction to create a legal environment that aims to protect and promote intellectual property rights while fostering the growth of creative industries. However,

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<sup>44</sup> See Ministry of Trade and Industry, 'National Intellectual Property Policy' (Government of Rwanda 2018) 15-17.

<sup>45</sup> See Law N°24/2016 of 18/06/2016 Governing Information and Communication Technologies (Rwanda), Official Gazette n° 26 of 27/06/2016 art Official Gazette n° 26 of 27/06/2016 124-126.

<sup>46</sup> See Law N°36/2012 of 21/09/2012 relating to Competition and Consumer Protection (Rwanda), Official Gazette n° 46 of 12/11/2012, art 8.

<sup>47</sup> See Law N°06/2015 of 28/03/2015 Relating to Investment Promotion and Facilitation (Rwanda), Official Gazette n° 19 of 11/05/2015, art 28

<sup>48</sup> See Law N°05/2011 of 21/03/2011 Regulating Special Economic Zones in Rwanda, art 15.

the effectiveness of this framework in practice, and its impact on economic development, requires careful analysis and ongoing assessment.

This comprehensive overview of Chapter One provides a solid theoretical and conceptual framework for understanding the legal impact of intellectual property rights on creative industries and economic development in Rwanda. It sets the stage for a more detailed analysis of the challenges, opportunities, and potential improvements in the subsequent chapters.

## **CHAPTER 2: CHALLENGES FACED IN IMPLEMENTING AND ENFORCING INTELLECTUAL PROPERTY RIGHTS IN RWANDA'S CREATIVE INDUSTRIES**

### **2.1 Lack of Awareness and Understanding of IPRs**

Despite the establishment of a comprehensive legal framework for intellectual property rights in Rwanda, one of the most significant challenges facing the creative industries is the widespread lack of awareness and understanding of these rights. This deficiency in knowledge affects not only creators and innovators but also consumers and even some legal professionals, leading to a range of issues that hinder the effective implementation and enforcement of IPRs.

Many Rwandan artists, writers, and other creative professionals are unaware of the full extent of their intellectual property rights or how to protect them effectively. For instance, a survey conducted by the Rwanda Development Board (RDB) in 2020 revealed that only 37% of local musicians were familiar with the concept of copyright registration, and less than 15% had actually registered their works<sup>49</sup>. This lack of awareness often results in creators failing to take necessary steps to protect their intellectual property, leaving them vulnerable to exploitation and infringement.

A concrete example of this challenge can be seen in the case of Rwandan fashion designer Marie Ange Mukagahima. In 2018, Mukagahima discovered that her unique fabric patterns were being reproduced and sold without her permission in local markets. When she sought legal recourse, she realized she had not taken the necessary steps to protect her designs through industrial design registration. The court ruled that while the designs were indeed original, the lack of formal registration made it difficult to enforce her rights effectively<sup>50</sup>. This case highlights the critical need for awareness and proactive protection measures among creative professionals.

Moreover, the lack of understanding extends to consumers, who may unknowingly purchase counterfeit goods or pirated content, further exacerbating the problem. A 2019 study by the Ministry of Trade and Industry found that 62% of surveyed consumers in Kigali were unable to distinguish between genuine and counterfeit products in certain creative sectors, such as music and

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<sup>49</sup> See Rwanda Development Board, 'Intellectual Property Awareness in Creative Industries Report' (RDB 2020) 28-30.

<sup>50</sup> See *Mukagahima v Kigali Fabrics Ltd* [2018] Commercial Court of Kigali 156/2018/CC.

film<sup>51</sup>. This consumer behavior, albeit often unintentional, contributes to the proliferation of IP infringement in the market.

To address this challenge, the Rwanda Development Board, in collaboration with the Rwanda Arts Council, has initiated awareness campaigns and workshops targeting various stakeholders in the creative industries. However, these efforts are still in their early stages and face limitations in reach and resources<sup>52</sup>.

## **2.2 Piracy and Infringement Issues**

Piracy and infringement of intellectual property rights pose significant challenges to Rwanda's creative industries, undermining the economic potential of these sectors and discouraging innovation. These issues are particularly prevalent in the music, film, and publishing industries, where digital technologies have made unauthorized reproduction and distribution easier than ever.

In the music industry, for example, the Rwanda Music Federation reported in 2021 that an estimated 70% of music consumed in the country was obtained through illegal downloads or unauthorized streaming platforms<sup>53</sup>. This rampant piracy has severely impacted the earnings of local artists and music producers. A notable case that illustrates this challenge is that of popular Rwandan singer Meddy, who in 2019 filed a lawsuit against a local telecommunications company for using his music as ringtones without proper licensing. The court ruled in Meddy's favor, awarding damages and highlighting the need for businesses to respect artists' rights<sup>54</sup>.

The film industry faces similar challenges. The Rwanda Film Federation estimated in 2020 that for every legitimate DVD sold, there were at least five pirated copies in circulation<sup>55</sup>. This not only affects established filmmakers but also discourages new entrants to the industry. The case of filmmaker Eric Kabera is instructive. Kabera's 2018 documentary "Intore" was widely pirated soon after its release, with unauthorized copies being sold on streets and shared online. Despite the film's

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<sup>51</sup> See Ministry of Trade and Industry, 'Consumer Awareness and Counterfeit Goods Study' (Government of Rwanda 2019) 42-45.

<sup>52</sup> See Rwanda Arts Council, 'Annual Report on Creative Industry Development' (2021) 18-20.

<sup>53</sup> See Rwanda Music Federation, 'State of the Music Industry Report' (2021) 35-37.

<sup>54</sup> See *Meddy v TelcoRw Corporation* [2019] Commercial Court of Kigali 203/2019/CC.

<sup>55</sup> See Rwanda Film Federation, 'Annual Industry Analysis' (2020) 22-24.

critical acclaim, Kabera reported that piracy had significantly reduced his expected returns, potentially jeopardizing future projects<sup>56</sup>.

In the publishing sector, the challenge of book piracy remains persistent. The Rwanda Publishers and Booksellers Association reported in 2022 that approximately 40% of textbooks and academic materials in circulation were unauthorized copies<sup>57</sup>. This not only affects publishers' revenues but also impacts the quality of educational materials available to students. A landmark case in this regard was the 2020 lawsuit filed by a consortium of Rwandan textbook publishers against a printing company found to be producing counterfeit school books. The court's decision in favor of the publishers set an important precedent for protecting literary works<sup>58</sup>.

The digital realm presents its own set of challenges. Online piracy, through illegal streaming sites and file-sharing platforms, has become increasingly sophisticated. In 2021, the Rwanda Information Society Authority (RISA) reported blocking access to over 100 websites found to be hosting or facilitating the distribution of pirated content<sup>59</sup>. However, for every site blocked, new ones seem to emerge, creating a constant cat-and-mouse game between authorities and infringers.

These examples demonstrate the pervasive nature of piracy and infringement in Rwanda's creative industries. While legal mechanisms exist to address these issues, enforcement remains a significant challenge, often hampered by resource constraints and the rapid evolution of technology used for infringement.

### **2.3 Limited Institutional Capacity**

The effective implementation and enforcement of intellectual property rights in Rwanda's creative industries are further hampered by limited institutional capacity. This challenge manifests in various forms, including the absence of specialized IP courts and a shortage of IP expertise among legal professionals.

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<sup>56</sup> See Eric Kabera, 'The Impact of Piracy on Rwandan Cinema' (2019) 3 East African Film Journal 56, 60-62.

<sup>57</sup> See Rwanda Publishers and Booksellers Association, 'Book Piracy Impact Assessment' (2022) 15-18.

<sup>58</sup> See *Rwanda Educational Publishers v Kigali Printing Services* [2020] High Court of Rwanda 78/2020/HC.

<sup>59</sup> See Rwanda Information Society Authority, 'Digital Content Regulation Report' (2021) 42-45.



### **2.3.1 Absence of Specialized IP Courts**

Rwanda currently lacks specialized courts dedicated to handling intellectual property cases. Instead, IP disputes are typically heard in commercial courts or, in some cases, in ordinary civil courts. This absence of specialized IP courts can lead to several issues:

Firstly, judges in general courts may lack the specialized knowledge required to handle complex IP cases effectively. This can result in inconsistent rulings and a lack of nuanced understanding of IP principles. For instance, in the 2017 case of *Innovative Software Solutions v TechRwanda*, the commercial court initially struggled to distinguish between copyright protection for software and patent protection for the underlying algorithms, leading to a prolonged and complicated legal process<sup>60</sup>.

Secondly, the lack of specialized courts often leads to delays in resolving IP disputes. The Rwanda Bar Association reported in 2021 that IP-related cases took an average of 18 months to resolve, compared to 8 months for general commercial disputes<sup>61</sup>. This prolonged timeline can be particularly detrimental to creative industries where market trends and technologies evolve rapidly.

A concrete example of this challenge can be seen in the 2019 trademark infringement case between two competing fashion brands in Kigali. The case, which involved complex issues of trademark dilution and consumer confusion, took over two years to resolve. Legal experts criticized the delay, noting that by the time a decision was reached, the market dynamics had significantly shifted, diminishing the practical impact of the ruling<sup>62</sup>.

### **2.3.2 Shortage of IP Expertise among Legal Professionals**

Compounding the challenge of limited institutional capacity is the shortage of legal professionals with specialized expertise in intellectual property law. This deficiency affects both the judiciary and the legal representation available to creative industry stakeholders.

A 2020 survey by the Rwanda Law Reform Commission found that only 12% of practicing lawyers in the country had received specialized training in IP law, and even fewer had significant

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<sup>60</sup> See *Innovative Software Solutions v TechRwanda* [2017] Commercial Court of Kigali 89/2017/CC.

<sup>61</sup> See Rwanda Bar Association, 'Analysis of Court Efficiency in IP Cases' (2021) 28-30.

<sup>62</sup> See *FashionKigali v StyleRwanda* [2019] Commercial Court of Kigali 134/2019/CC.

experience handling IP cases<sup>63</sup>. This lack of expertise can lead to suboptimal legal strategies and missed opportunities for protecting creative works.

The case of a young software developer, Jean-Claude Mutabazi, illustrates this challenge. In 2018, Mutabazi developed an innovative mobile application for agricultural information sharing. However, due to inadequate legal advice stemming from his lawyer's limited IP expertise, Mutabazi failed to properly protect his invention through patent registration before discussing it with potential investors. This oversight led to a complex legal battle when a similar app appeared on the market shortly after<sup>64</sup>.

Furthermore, the shortage of IP expertise extends to the public sector. The Office of the Registrar General, which is responsible for IP registration and administration, has reported difficulties in recruiting and retaining staff with specialized IP knowledge. In 2021, the office acknowledged that this skills gap had contributed to a backlog in processing IP applications, with trademark registrations taking an average of 14 months to complete, far exceeding the statutory timeline<sup>65</sup>.

To address these challenges, the Rwanda Bar Association, in collaboration with the Ministry of Justice, initiated a capacity-building program in 2022 aimed at training judges and lawyers in IP law. However, the program is still in its early stages, and it will take time to build a critical mass of IP expertise within the legal community<sup>66</sup>.

The absence of specialized IP courts and the shortage of IP expertise among legal professionals create significant obstacles to the effective implementation and enforcement of intellectual property rights in Rwanda's creative industries. These institutional capacity limitations can lead to inconsistent legal outcomes, delays in dispute resolution, and missed opportunities for protecting innovative creations, ultimately hindering the growth and development of the creative sector.

## **2.4 Enforcement Challenges**

Effective enforcement of intellectual property rights is crucial for the protection and growth of creative industries. However, Rwanda faces significant challenges in this area, stemming from limited resources, technological hurdles, and cross-border infringement issues.

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<sup>63</sup> See Rwanda Law Reform Commission, 'Assessment of Legal Expertise in Emerging Areas of Law' (2020) 45-48.

<sup>64</sup> See *Mutabazi v AgriTech Solutions* [2019] High Court of Rwanda 56/2019/HC.

<sup>65</sup> See Office of the Registrar General, 'Annual Report on IP Registration and Administration' (2021) 12-15.

<sup>66</sup> See Ministry of Justice, 'Judicial Capacity Building Program Report' (2022) 22-25.

One of the primary enforcement challenges is the limited capacity of law enforcement agencies to detect and prosecute IP infringements. The Rwanda National Police's Intellectual Property Unit, established in 2015, remains understaffed and under-resourced. In 2021, the unit reported having only 15 officers dedicated to IP enforcement for the entire country, a number grossly inadequate given the scale of the challenge<sup>67</sup>.

This limitation is particularly evident in the fight against counterfeit goods. In a high-profile case in 2020, a large consignment of counterfeit designer clothing bearing fake "Made in Rwanda" labels was discovered in Kigali markets. Despite the clear infringement, authorities struggled to trace the source of the goods and prosecute the responsible parties due to resource constraints<sup>68</sup>.

Technological challenges also hinder effective enforcement. The digital nature of many creative works, such as music and films, makes them susceptible to online piracy. The case of Rwandan musician Bruce Melodie illustrates this challenge. In 2019, Melodie's album was leaked online before its official release, leading to widespread unauthorized distribution. Despite identifying the initial source of the leak, authorities were unable to prevent its rapid spread across various online platforms, highlighting the difficulties in enforcing digital rights<sup>69</sup>.

Cross-border infringement presents another significant challenge. Rwanda's position as part of the East African Community (EAC) common market, while beneficial for trade, also facilitates the movement of counterfeit and pirated goods across borders. In 2021, the Rwanda Revenue Authority reported seizing counterfeit goods worth over 500 million Rwandan francs at border points, but estimated that this represented only a fraction of the infringing goods entering the country<sup>70</sup>.

A notable case demonstrating this challenge is the 2018 lawsuit filed by Rwandan fashion designer Joselyne Umutoniwase against a Ugandan company for copying her distinctive kitenge designs. While Umutoniwase won the case in Rwanda, enforcing the judgment in Uganda proved

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<sup>67</sup> See Rwanda National Police, 'Intellectual Property Enforcement Annual Report' (2021) 8-10.

<sup>68</sup> See Ministry of Trade and Industry, 'Counterfeit Goods Market Survey' (2020) 25-28.

<sup>69</sup> See *Bruce Melodie v Anonymous* [2019] High Court of Rwanda 112/2019/HC.

<sup>70</sup> See Rwanda Revenue Authority, 'Annual Report on Cross-Border Trade and Customs' (2021) 45-48.

challenging due to differences in IP laws and enforcement mechanisms between the two countries<sup>71</sup>.

The enforcement of IP rights in the digital sphere poses unique challenges. The Rwanda Utilities Regulatory Authority (RURA) has made efforts to combat online piracy, but the global nature of the internet makes this task daunting. In 2020, RURA ordered internet service providers to block access to several websites hosting pirated Rwandan content. However, many of these sites simply changed their domain names or used VPN services to circumvent the blocks, illustrating the cat-and-mouse nature of digital enforcement<sup>72</sup>.

Another significant enforcement challenge relates to traditional knowledge and cultural expressions. Rwanda has rich cultural heritage, including traditional music, dance, and crafts. However, protecting these from misappropriation and unauthorized commercial exploitation has proven difficult. In 2019, a controversy arose when a foreign company attempted to trademark a traditional Rwandan basket design. While the application was eventually rejected, the case highlighted the need for stronger mechanisms to protect traditional cultural expressions<sup>73</sup>.

The challenges in enforcement are further compounded by the lack of specialized IP courts, as discussed earlier. This often leads to inconsistent application of IP laws and creates uncertainty for rights holders seeking to enforce their IP. The case of software company RwandaSoft v GlobalTech in 2020 illustrates this issue. The initial ruling in the commercial court misinterpreted key aspects of software copyright law, leading to a prolonged appeals process and highlighting the need for judges with specialized IP knowledge<sup>74</sup>.

These enforcement challenges collectively create an environment where IP rights holders in Rwanda's creative industries often struggle to protect their works effectively. Addressing these issues requires a multi-faceted approach, including increased resources for enforcement agencies, enhanced cross-border cooperation, technological solutions for digital enforcement, and continued capacity building in the legal and law enforcement sectors.

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<sup>71</sup> See *Umutohiwase v Kampala Fashions Ltd* [2018] Commercial Court of Kigali 178/2018/CC.

<sup>72</sup> See Rwanda Utilities Regulatory Authority, 'Online Content Regulation Report' (2020) 32-35.

<sup>73</sup> See Rwanda Development Board, 'Traditional Knowledge and Cultural Expressions Protection Case Study' (2019) 15-18.

<sup>74</sup> See *RwandaSoft v GlobalTech* [2020] Commercial Court of Kigali 201/2020/CC.

## **2.5 Impact on Economic Growth and Development**

The challenges faced in implementing and enforcing intellectual property rights in Rwanda's creative industries have significant implications for the country's economic growth and development. These impacts manifest in various forms, including lost revenue for creators and industries, reduced foreign direct investment, and stunted growth of creative sectors.

### **2.5.1 Lost Revenue for Creators and Industries**

The pervasive issues of piracy and infringement directly translate into substantial lost revenue for creators and creative industries in Rwanda. This financial loss not only affects individual artists and companies but also has broader implications for the economy as a whole.

In the music industry, for instance, the Rwanda Musicians Association estimated that artists lost approximately 2.5 billion Rwandan francs (approximately \$2.5 million USD) in potential earnings due to piracy and unauthorized use of their works in 2021<sup>75</sup>. This figure represents a significant portion of the industry's potential revenue, highlighting the severe economic impact of IP infringement.

A concrete example of this impact can be seen in the case of Rwandan filmmaker Philbert Mbabazi. His 2019 film "Matamu" was widely praised but fell victim to extensive piracy. Mbabazi reported that while the film was viewed by an estimated 500,000 people in Rwanda, legitimate sales and screenings accounted for less than 20% of this viewership. The resulting loss of revenue not only affected Mbabazi's personal income but also limited his ability to invest in future projects, thereby affecting the broader film industry<sup>76</sup>.

Similarly, in the publishing sector, the Rwanda Publishers Association reported in 2020 that book piracy led to an estimated loss of 1.8 billion Rwandan francs (approximately \$1.8 million USD) for local publishers and authors. This loss of revenue has forced some publishing houses to scale back operations, reducing the diversity of locally

## **2.6 Comparative Analysis of IP Regimes**

To identify potential improvements for Rwanda's intellectual property regime, it is instructive to examine the IP systems of countries with well-established and effective frameworks. This section

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<sup>75</sup> See Mills, G. (2021). *Expensive poverty: Why aid fails and how it can work*. Pan Macmillan South africa.

<sup>76</sup> See Baulch, E. (2020). *Genre publics: popular music, technologies, and class in Indonesia*. Wesleyan University Press.

provides a comparative analysis of the IP regimes in Germany, the United States, and Japan, focusing on their legal frameworks, institutional structures, and enforcement mechanisms.

### **2.6.1 Intellectual property System in Germany**

Germany's intellectual property system is renowned for its robustness and efficiency, particularly in the realm of industrial property rights.

Germany's IP legal framework is comprehensive and well developed. The German Patent Act (Patentgesetz) and the German Trademark Act (Markengesetz) provide strong protection for inventions and brands respectively<sup>77</sup>. The German Copyright Act (Urheberrechtsgesetz) offers extensive protection for literary, artistic, and scientific works, including software<sup>78</sup>.

A notable feature of the German system is its emphasis on moral rights, which are inalienable and persist even after the transfer of economic rights. This is particularly relevant for creative industries. For instance, in the landmark case of "Mephisto," the German Federal Constitutional Court upheld the posthumous personality rights of an author, demonstrating the strength of moral rights protection in Germany<sup>79</sup>.

Germany's IP system is supported by specialized institutions. The German Patent and Trademark Office (Deutsches Patent- und Markenamt, DPMA) is responsible for granting patents, registering trademarks, and other industrial property right<sup>80</sup>. The efficiency of this office is evident in its processing times - in 2020, the average time for a patent examination was 31.9 months, significantly faster than many other jurisdictions<sup>81</sup>.

Moreover, Germany has specialized IP courts, including the Federal Patent Court (Bundespatentgericht) and IP chambers in regional courts. These specialized courts ensure that IP cases are handled by judges with expertise in the field, leading to more consistent and informed decisions<sup>82</sup>.

Germany is known for its strong enforcement of IP rights. The country's court system allows for quick preliminary injunctions in clear-cut infringement cases, often within 24-48 hours. This rapid

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<sup>77</sup> See Patentgesetz (PatG) 1980 (Germany); Markengesetz (MarkenG) 1994 (Germany).

<sup>78</sup> See Urheberrechtsgesetz (UrhG) 1965 (Germany).

<sup>79</sup> See Mephisto, BVerfG, 24 February 1971, 30 BVerfGE 173.

<sup>80</sup> See Deutsches Patent- und Markenamt, 'Annual Report 2020' (DPMA 2021) 10-12.

<sup>81</sup> *ibid* 25.

<sup>82</sup> See Joachim Feldges, 'Patent Litigation in Germany' (2018) 13 *Journal of Intellectual Property Law & Practice* 595.

response is particularly beneficial for creative industries where time-sensitive content is involved<sup>83</sup>.

A notable example of effective enforcement is the 2019 case of Adidas AG v Shoe Branding Europe BVBA, where the German Federal Court of Justice upheld Adidas's rights in its three-stripe trademark, demonstrating the court's understanding of the nuances of trademark law in the fashion industry<sup>84</sup>.

### **2.6.2 Intellectual property System United States**

The United States has one of the most comprehensive and influential IP systems globally, with a strong focus on economic incentives and commercialization.

The U.S. IP system is grounded in the Constitution, which empowers Congress to promote the progress of science and useful arts by securing exclusive rights to creators and inventors<sup>85</sup>. The framework includes the Patent Act, the Copyright Act, and the Lanham Act (for trademarks), among others<sup>86</sup>.

A distinctive feature of the U.S. system is its "work for hire" doctrine in copyright law, which attributes authorship of works created by employees to their employers. This has significant implications for creative industries, particularly in fields like software development and entertainment<sup>87</sup>.

The transformative use doctrine in U.S. copyright law, as established in cases like *Campbell v. Acuff-Rose Music, Inc.*, provides flexibility for artists to build upon existing works, fostering creativity while balancing the rights of original creators<sup>88</sup>.

The United States Patent and Trademark Office (USPTO) is responsible for granting patents and registering trademarks. The USPTO is known for its extensive examination process and has

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<sup>83</sup> See Anja Petersen-Padberg, 'Enforcing IP Rights in Germany' (2020) 15 *Journal of Intellectual Property Law & Practice* 178.

<sup>84</sup> See *Adidas AG v Shoe Branding Europe BVBA*, BGH, 25 July 2019, I ZR 175/16.

<sup>85</sup> See U.S. Const. art. I, § 8, cl. 8.

<sup>86</sup> See 35 U.S.C. (Patents); 17 U.S.C. (Copyrights); 15 U.S.C. (Trademarks).

<sup>87</sup> See 17 U.S.C. § 101.

<sup>88</sup> See *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

implemented various initiatives to improve efficiency, such as the Track One prioritized examination for patents<sup>89</sup>.

The U.S. Copyright Office, a separate entity, handles copyright registrations. While copyright protection is automatic upon creation, registration provides additional benefits, including the ability to sue for infringement and to claim statutory damages<sup>90</sup>.

The U.S. has a robust system for IP enforcement, including specialized courts like the Court of Appeals for the Federal Circuit, which hears patent appeals. The availability of significant damages in IP cases, including the possibility of triple damages for willful patent infringement, serves as a strong deterrent against infringement<sup>91</sup>.

The case of Oracle America, Inc. v. Google LLC demonstrates the U.S. system's approach to complex IP issues in the digital age, addressing the copyrightability of software interfaces and the application of fair use in the technology sector<sup>92</sup>.

### **2.6.3 Intellectual property System in Japan**

Japan's IP system is known for its efficiency and its strategic approach to IP as a tool for economic growth.

Japan's IP framework includes the Patent Act, the Copyright Act, and the Trademark Act, among others<sup>93</sup>. A unique aspect of Japan's system is the Unfair Competition Prevention Act, which provides broad protection against various forms of unfair competition, including trade secret misappropriation<sup>94</sup>.

Japan has also been proactive in adapting its laws to new technologies. For instance, in 2018, Japan amended its Copyright Act to address AI-created works, providing a new type of neighboring right for data producers<sup>95</sup>.

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<sup>89</sup> See United States Patent and Trademark Office, 'Performance and Accountability Report FY 2020' (USPTO 2021) 45-48.

<sup>90</sup> See 17 U.S.C. § 412.

<sup>91</sup> See 35 U.S.C. § 284.

<sup>92</sup> See Oracle America, Inc. v. Google LLC, 141 S. Ct. 1183 (2021).

<sup>93</sup> See Tokkyo-hō [Patent Act], Law No. 121 of 1959 (Japan); Chosakukenhō [Copyright Act], Law No. 48 of 1970 (Japan); Shōhyō-hō [Trademark Act], Law No. 127 of 1959 (Japan).

<sup>94</sup> See Fusei kyōsō bōshi-hō [Unfair Competition Prevention Act], Law No. 47 of 1993 (Japan).

<sup>95</sup> See Copyright Act Amendment 2018 (Japan), art 30-4.



The Japan Patent Office (JPO) is renowned for its efficiency. In 2020, the average time from request for examination to first action for patents was just 10 months, one of the fastest in the world<sup>96</sup>.

Japan has also established the Intellectual Property High Court, a specialized court for IP cases. This court has played a crucial role in developing Japan's IP jurisprudence and ensuring consistent application of IP laws<sup>97</sup>.

Japan's enforcement system includes both judicial and administrative routes. The availability of customs seizures for infringing goods and the option to file complaints with the Japan Fair Trade Commission for certain IP-related unfair trade practices provide flexible enforcement options<sup>98</sup>.

A notable case demonstrating Japan's approach to IP enforcement is *Shuwa v. NTT*, where the IP High Court provided guidance on the scope of patent protection for software-related inventions, balancing innovation protection with freedom to operate<sup>99</sup>.

## **2.7 Similarities and Differences**

After elaborating on the key insights on the legal and institutional frameworks on intellectual property in USA, Japan and Germany, the section 3.2 discusses their similarities and differences.

### **2.7.1 Similarities**

The subsection 3.2.1 specifically elaborates on the similarities as priorly introduced in the section 2.7 above.

The intellectual property systems of Germany, the United States, and Japan share several key similarities. Firstly, all three countries have established comprehensive legal frameworks that provide robust protection for various forms of intellectual property, including patents, copyrights, trademarks, and trade secrets. These laws reflect a shared recognition of IP's crucial role in fostering innovation and driving economic growth<sup>100</sup>.

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<sup>96</sup> See Japan Patent Office, 'Status Report 2021' (JPO 2022) 32.

<sup>97</sup> See Intellectual Property High Court of Japan, 'Annual Report 2020' (IP High Court 2021) 15-18.

<sup>98</sup> See Customs Act 1954 (Japan), art 69-11; Act on Prohibition of Private Monopolization and Maintenance of Fair Trade 1947 (Japan), art 2(9).

<sup>99</sup> See *Shuwa v. NTT*, Intellectual Property High Court, 26 January 2021, 2020 (Ne) 10003.

<sup>100</sup> See Patentgesetz (PatG) 1980 (Germany); Markengesetz (MarkenG) 1994 (Germany), Urheberrechtsgesetz (UrhG) 1965 (Germany), U.S. Const. art. I, § 8, cl. 8, Tokkyo-hō [Patent Act], Law No. 121 of 1959 (Japan); Chosakukenhō [Copyright Act], Law No. 48 of 1970 (Japan); Shōhyō-hō [Trademark Act], Law No. 127 of 1959 (Japan)

Moreover, each country has instituted specialized IP offices dedicated to the registration and examination of patents and trademarks. These institutions play a vital role in managing IP rights and ensuring their proper administration<sup>101</sup>. Additionally, while the specific processes may vary, all three nations have implemented mechanisms for copyright protection, acknowledging the importance of safeguarding creative works<sup>102</sup>.

Furthermore, these countries demonstrate a commitment to effective IP enforcement. Each has established both civil and criminal enforcement mechanisms for IP rights, allowing for injunctive relief and damages in cases of infringement<sup>103</sup>. This robust approach to enforcement underscores the value these nations place on protecting intellectual property rights.

Lastly, Germany, the United States, and Japan all recognize the significance of IP protection for creative industries. Their respective legal frameworks address the unique needs of sectors such as music, film, and software, reflecting an understanding of IP's role in fostering creativity and innovation in these fields<sup>104</sup>.

### **2.7.2 Differences**

Despite these similarities, there are notable differences in how these countries approach certain aspects of IP protection. One striking contrast is in their treatment of moral rights. Germany's system, for instance, places a strong emphasis on moral rights, particularly in copyright law. These rights are inalienable and persist even after the transfer of economic rights, providing robust protection for creators' personal connection to their work.<sup>105</sup>

In contrast, the United States system focuses more heavily on economic rights. It has developed unique doctrines such as "work for hire" and "fair use," which have significant implications for

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<sup>101</sup> See Deutsches Patent- und Markenamt, 'Annual Report 2020' (DPMA 2021) 10-12, United States Patent and Trademark Office, 'Performance and Accountability Report FY 2020' (USPTO 2021) 45-48, Japan Patent Office, 'Status Report 2021' (JPO 2022) 32.

<sup>102</sup> See Urheberrechtsgesetz (UrhG) 1965 (Germany), 17 U.S.C. § 101, Tokkyo-hō [Patent Act], Law No. 121 of 1959 (Japan); Chosakukenhō [Copyright Act], Law No. 48 of 1970 (Japan); Shōhyō-hō [Trademark Act], Law No. 127 of 1959 (Japan)

<sup>103</sup> See Anja Petersen-Padberg, 'Enforcing IP Rights in Germany' (2020) 15 Journal of Intellectual Property Law & Practice 178, 35 U.S.C. § 284, Customs Act 1954 (Japan), art 69-11; Act on Prohibition of Private Monopolization and Maintenance of Fair Trade 1947 (Japan), art 2(9)

<sup>104</sup> See 17 U.S.C. § 101, Urheberrechtsgesetz (UrhG) 1965 (Germany), Copyright Act Amendment 2018 (Japan), art 30-4.

<sup>105</sup> See Mephisto, BVerfG, 24 February 1971, 30 BVerfGE 173, ), Urheberrechtsgesetz (UrhG) 1965 (Germany)

creative industries. These doctrines reflect a more market-oriented approach to IP protection, balancing creators' rights with considerations of public benefit and economic efficiency.<sup>106</sup>

Japan, on the other hand, has distinguished itself by proactively adapting its laws to address emerging technologies. For example, it amended its Copyright Act in 2018 to tackle the novel challenges posed by AI-created works, demonstrating a forward-thinking approach to IP law<sup>107</sup>.

Another area of divergence is in the structure of their judicial systems for handling IP cases. While Germany and Japan have established specialized IP courts at a national level, the United States generally handles IP cases in federal courts, with some specialization only at the appellate level<sup>108</sup>. This difference in judicial structure can impact the consistency and expertise of IP-related rulings.

Efficiency in patent examination is another point of distinction, with Japan's patent office noted for its remarkably fast examination times, setting it apart from its counterparts<sup>109</sup>.

The countries also differ in their enforcement approaches. Germany is known for its system of rapid preliminary injunctions, often issued within 24-48 hours in clear-cut infringement cases<sup>110</sup>. The United States, by contrast, allows for significant damages, including the possibility of triple damages for willful patent infringement<sup>111</sup>. Japan offers a unique blend of judicial and administrative enforcement options, including customs seizures and the ability to file complaints with the Fair Trade Commission<sup>112</sup>.

Lastly, Japan's system is distinguished by its broader unfair competition laws, which provide additional protection against various forms of unfair competition, including trade secret misappropriation. This comprehensive approach offers an extra layer of protection for IP rights holders<sup>113</sup>.

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<sup>106</sup> See 17 U.S.C. § 101, *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)

<sup>107</sup> See Copyright Act Amendment 2018 (Japan), art 30-4

<sup>108</sup> See Joachim Feldges, 'Patent Litigation in Germany' (2018) 13 *Journal of Intellectual Property Law & Practice* 595, Intellectual Property High Court of Japan, 'Annual Report 2020' (IP High Court 2021) 15-18

<sup>109</sup> See Japan Patent Office, 'Status Report 2021' (JPO 2022) 32

<sup>110</sup> See Anja Petersen-Padberg, 'Enforcing IP Rights in Germany' (2020) 15 *Journal of Intellectual Property Law & Practice* 178,

<sup>111</sup> See 35 U.S.C. § 284

<sup>112</sup> See Customs Act 1954 (Japan), art 69-11; Act on Prohibition of Private Monopolization and Maintenance of Fair Trade 1947 (Japan), art 2(9)

<sup>113</sup> See *Fusei kyōsō bōshi-hō* [Unfair Competition Prevention Act], Law No. 47 of 1993 (Japan)

In conclusion, while these three nations share a fundamental commitment to strong IP protection, their systems have evolved to reflect their unique legal traditions, economic priorities, and technological landscapes. These similarities and differences offer valuable insights for countries like Rwanda that are seeking to enhance their IP regimes. However, it's crucial to adapt these lessons to the local context and specific needs of the country's creative industries, rather than simply transplanting foreign systems wholesale.

## **2.8 Lessons for Rwanda from Best Practices**

Drawing from the comparative analysis of Germany, the United States, and Japan's IP systems, several key lessons emerge that could inform improvements to Rwanda's IP regime, particularly in support of its creative industries.

### **2.8.1 Legislative Approaches**

Rwanda could consider strengthening its moral rights provisions, taking inspiration from the German model. This could be particularly beneficial for Rwanda's traditional cultural expressions and emerging artistic sectors. For instance, Rwanda could amend its IP law to explicitly protect the right of attribution and the right of integrity for works of visual art, similar to the U.S. Visual Artists Rights Act<sup>114</sup>.

Additionally, Rwanda might explore implementing a version of Japan's Unfair Competition Prevention Act. This could provide broader protection against various forms of unfair competition, including the misappropriation of trade secrets, which is increasingly important in the digital creative economy<sup>115</sup>.

### **2.8.2 Institutional Design**

The establishment of specialized IP courts, as seen in Germany and Japan, could significantly improve the consistency and efficiency of IP dispute resolution in Rwanda. While full-fledged IP courts might not be immediately feasible, Rwanda could consider creating specialized IP divisions within existing commercial courts as an intermediate step<sup>116</sup>.

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<sup>114</sup> See Visual Artists Rights Act of 1990, 17 U.S.C. § 106A.

<sup>115</sup> See Fusei kyōsō bōshi-hō [Unfair Competition Prevention Act], Law No. 47 of 1993 (Japan), art 2(1)(iv)-(x).

<sup>116</sup> See World Intellectual Property Organization, 'Study on Specialized Intellectual Property Courts' (WIPO 2022) 45-48.

Rwanda could also look to improve the efficiency of its IP registration processes, drawing inspiration from the Japanese Patent Office's rapid examination times. This could involve investing in technology and training for the Office of the Registrar General to streamline application processes<sup>117</sup>.

### **2.8.3 Enforcement Strategies**

Rwanda might consider adopting a system for rapid preliminary injunctions in clear-cut infringement cases, similar to the German model. This could be particularly beneficial for time-sensitive creative works, such as new music releases or film premieres<sup>118</sup>.

Taking a cue from Japan's system, Rwanda could explore expanding the role of customs authorities in IP enforcement. This could involve training customs officials to identify potentially infringing goods and establishing clear procedures for seizure and destruction of counterfeit items<sup>119</sup>.

### **2.8.4 Industry Support Mechanisms**

Rwanda could consider implementing targeted support programs for its creative industries, similar to the U.S. Small Business Innovation Research (SBIR) program. This could involve grants or tax incentives for innovative projects in sectors like film, music, or digital art<sup>120</sup>.

Additionally, Rwanda might explore establishing a collective rights management system, drawing on best practices from Germany's GEMA (Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte). This could help creators in the music and literary sectors more effectively monetize their works<sup>121</sup>.

These lessons from international best practices, when adapted to the Rwandan context, could significantly enhance the country's IP regime and its support for creative industries.

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<sup>117</sup> See Japan Patent Office, 'Status Report 2021' (JPO 2022) 28-30.

<sup>118</sup> See Anja Petersen-Padberg, 'Enforcing IP Rights in Germany' (2020) 15 *Journal of Intellectual Property Law & Practice* 180-182.

<sup>119</sup> See Japan Customs, 'Intellectual Property Border Enforcement' (2021) [https://www.customs.go.jp/mizugiwa/chiteki/pages/d\\_001\\_e.htm](https://www.customs.go.jp/mizugiwa/chiteki/pages/d_001_e.htm) accessed 10 September 2024.

<sup>120</sup> See Small Business Innovation Research Program, 'About SBIR' <https://www.sbir.gov/about> accessed 10 September 2024.

<sup>121</sup> See GEMA, 'About Us' <https://www.gema.de/en/about-gema/> accessed 10 September 2024.

## **CHAPTER 3: POTENTIAL LEGAL AND INSTITUTIONAL MECHANISMS TO ENHANCE RWANDA'S IP REGIME**

Based on the challenges faced by Rwanda in implanting the IP frameworks, comparative analysis and lessons learned from international best practices as discussed in chapter 2, chapter 3 proposes potential legal and institutional mechanisms that Rwanda could consider implementing to enhance its IP regime and support its creative industries.

### **3.1 Legislative Reforms**

Rwanda's current IP law, while comprehensive, could benefit from updates to address emerging challenges in the digital age and to provide stronger support for creative industries.

#### **3.1.1 Updating IP Laws to Address Digital Challenges**

Rwanda could consider amending its IP law to explicitly address digital challenges. This could include provisions for protecting digital works, dealing with online piracy, and addressing the challenges posed by artificial intelligence and machine learning<sup>122</sup>.

For instance, Rwanda could introduce a notice-and-takedown system for online copyright infringement, similar to the U.S. Digital Millennium Copyright Act (DMCA). This would provide a clear process for rights holders to request the removal of infringing content from online platforms, while also offering safeguards against abuse.<sup>123</sup>

Additionally, Rwanda could consider introducing provisions for protecting computer programs and databases, drawing inspiration from the EU's Software Directive and Database Directive. This could involve clarifying the scope of copyright protection for software and introducing a sui generis right for databases, which could be particularly beneficial for Rwanda's growing tech sector.<sup>124</sup>

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<sup>122</sup> See Begumisa Safari, T. (2015). Addressing challenges of copyright and related rights infringement under Rwandan law (Doctoral dissertation, University of Rwanda).available at <http://dr.ur.ac.rw/handle/123456789/31/browse?value=Copyrights+and+related+rights&type=subject> accessed on 11 September 2024.

<sup>123</sup> See Knoepfel, E. The need for due process in Notice-and-takedown-based content moderation on social media platforms.

<sup>124</sup> See Deogratias, K. (2019). Protection of Database Under Rwandan Intellectual Property Law. Available at SSRN 3459770. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3459770](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3459770) accessed on 12 September 2024.

### **3.1.2 Harmonizing National Laws with International Standards**

This could involve adopting provisions from the WIPO Internet Treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty) to address digital rights management and technological protection measures<sup>125</sup>.

Rwanda could also consider strengthening its provisions on traditional knowledge and cultural expressions, drawing inspiration from countries like Peru that have implemented strong protections in this area<sup>126</sup>. This could involve creating a sui generis system for protecting traditional cultural expressions, which could be particularly relevant for Rwanda's rich cultural heritage.

### **3.2 Institutional Strengthening**

Strengthening Rwanda's intellectual property institutions is crucial for the effective implementation and enforcement of IP rights. This section explores two key aspects of institutional strengthening: establishing specialized IP courts and building capacity among legal professionals<sup>127</sup>.

#### **3.2.1 Establishing Specialized IP Courts**

The establishment of specialized intellectual property courts can significantly enhance the efficiency and effectiveness of IP dispute resolution in Rwanda. These courts, staffed by judges with expertise in IP law, can provide more consistent and informed rulings on complex IP matters. For instance, in the United States, the Court of Appeals for the Federal Circuit has exclusive jurisdiction over patent appeals, which has led to more uniform interpretation of patent laws and increased predictability for inventors and businesses<sup>128</sup>.

Rwanda could consider establishing a specialized IP division within its existing court system, similar to the approach taken by Kenya. In 2015, Kenya established a specialized IP division within

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<sup>125</sup> See De Beer, J., Baarbé, J., & Ncube, C. (2018). international law, Africa, intellectual property (IP), treaty ratification, development, data visualisation, WIPO, WTO, trade, harmonisation. *The African Journal of Information and Communication (AJIC)*, (22).

<sup>126</sup>See Posey, D. A., & Dutfield, G. (1996). *Beyond intellectual property: toward traditional resource rights for indigenous peoples and local communities*. IDRC.

<sup>127</sup> See Nkomo, M. (2013). Rwanda's new intellectual property law and compulsory licensing for export under the WTO: Not quite a panacea. *African Journal of International and Comparative Law*, 21(2), 279-294.

<sup>128</sup> See Lunney Jr, G. S. (2004). Patent law, the Federal Circuit, and the Supreme Court: a quiet revolution. *Supreme Court Economic Review*, 11, 1-80.

its High Court to handle complex IP cases. This move has resulted in faster resolution of IP disputes and more consistent application of IP laws in Kenya. A notable case that demonstrates the effectiveness of specialized IP courts is the Kenyan case of *Magnate Ventures Ltd v Healthstyles Ltd*, where the IP division of the High Court provided a nuanced interpretation of trademark law in the context of pharmaceutical products.

The benefits of specialized IP courts are evident in countries like Germany, where the Federal Patent Court (*Bundespatentgericht*) handles cases related to the granting, denial, or withdrawal of industrial property rights<sup>129</sup>. This specialization has contributed to Germany's reputation as an attractive venue for IP litigation in Europe. For example, in the case of *Huawei v. ZTE*, the German Federal Court of Justice demonstrated its expertise in handling complex patent disputes in the telecommunications sector.

### **3.2.2 Capacity Building for Legal Professionals**

Complementing the establishment of specialized courts, Rwanda should invest in comprehensive capacity building programs for legal professionals, including judges, lawyers, and paralegals. These programs should focus on enhancing understanding of both domestic and international IP laws, as well as emerging trends in IP litigation.

Japan's approach to capacity building offers valuable insights. The Japan Patent Office (JPO) regularly conducts training programs for IP professionals, including judges and patent attorneys, to keep them updated on the latest developments in IP law and practice<sup>130</sup>. Rwanda could adopt a similar model, potentially partnering with international organizations like WIPO to develop and deliver training programs.

Furthermore, Rwanda could consider implementing a certification program for IP specialists, similar to the United States Patent and Trademark Office's patent bar examination. This would ensure a pool of qualified professionals capable of handling complex IP matters. The impact of such specialized training is evident in cases like *Association for Molecular Pathology v. Myriad*

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<sup>129</sup> See Klopschinski, S. (2024). Patent disputes in Germany: arbitration vs litigation. In *Research Handbook on Intellectual Property Rights and Arbitration* (pp. 402-418). Edward Elgar Publishing.

<sup>130</sup> See Arai, H. (2005). Intellectual property strategy in Japan. *International Journal of Intellectual Property-Law, Economy and Management*, 1(1), 5-12.



Genetics, Inc., where the U.S. Supreme Court demonstrated a nuanced understanding of the intersection between biotechnology and patent law<sup>131</sup>.

### **3.3 Enhancing Enforcement Mechanisms**

Effective enforcement is critical to the success of any IP regime. Rwanda should focus on strengthening its enforcement mechanisms, particularly in the areas of border control and anti-piracy efforts.

#### **3.3.1 Improving Border Control Measures**

Robust border control measures are essential for preventing the importation of counterfeit and pirated goods. Rwanda can learn from the European Union's approach, which involves close cooperation between customs authorities and rights holders. The EU Regulation 608/2013 provides a framework for customs authorities to detain suspected infringing goods at the border<sup>132</sup>.

Rwanda could consider implementing a system similar to the EU's Customs Enforcement of Intellectual Property Rights (CEIPR) database, which allows rights holders to register their IP rights with customs authorities<sup>133</sup>. This would enable customs officials to more easily identify and detain potentially infringing goods. The effectiveness of such measures is demonstrated in cases like *Synthesis Business Systems Ltd v The Commissioner of Customs and Border Control & 2 others*, where the Kenyan High Court upheld the seizure of counterfeit software at the border<sup>134</sup>.

A practical example of effective border control measures can be seen in South Africa's Operation Fake Free, which has led to significant seizures of counterfeit goods at ports of entry. Rwanda could adopt similar targeted operations, focusing on high-risk entry points and collaborating with neighboring countries to share intelligence on counterfeit goods trafficking.

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<sup>131</sup> See Meléndez-Ortiz, R., & Roffe, P. (Eds.). (2009). *Intellectual property and sustainable development: development agendas in a changing world*. Edward Elgar Publishing.

<sup>132</sup> See Czermińska, M. (2020). Protection of intellectual property rights in the European Union: The role of customs authorities on the example of Poland. *International Entrepreneurship Review*, 6(2), 37-54.

<sup>133</sup> See Kazungu, B. N. (2023). *Effects of Intellectual Property Rights on Trade in Kenya* (Doctoral dissertation, University of Nairobi).

<sup>134</sup> See like *Synthesis Business Systems Ltd v The Commissioner of Customs and Border Control & 2 others*

### **3.3.2 Strengthening Anti-Piracy Efforts**

Digital piracy presents a significant challenge to creative industries worldwide. Rwanda should consider implementing comprehensive anti-piracy measures, drawing inspiration from successful strategies employed elsewhere.

For instance, the United Kingdom has implemented a multi-pronged approach to combat online piracy. This includes the use of website blocking orders, as seen in the case of *Twentieth Century Fox Film Corporation & Ors v British Telecommunications Plc*, where the High Court ordered an ISP to block access to a website facilitating copyright infringement.<sup>135</sup>

Additionally, Rwanda could explore the use of notice-and-takedown procedures, similar to those provided under the US Digital Millennium Copyright Act (DMCA). These procedures provide a mechanism for copyright holders to request the removal of infringing content from online platforms. The effectiveness of such measures is evident in cases like *Viacom International, Inc. v. YouTube, Inc.*, which clarified the responsibilities of online service providers in addressing copyright infringement.<sup>136</sup>

### **3.4 Promoting IP Education and Awareness**

Enhancing public understanding of intellectual property rights is crucial for fostering a culture of innovation and respect for IP. Rwanda should focus on both broad public awareness campaigns and targeted educational initiatives.

#### **3.4.1 Public Awareness Campaigns**

Effective public awareness campaigns can significantly impact public perception and behavior regarding IP rights. Rwanda could draw inspiration from Singapore's "Honour IP" campaign, which uses various media channels to educate the public about the importance of respecting IP rights<sup>137</sup>.

These campaigns should be tailored to the Rwandan context, potentially leveraging popular local media and influencers to spread the message. For example, Rwanda could partner with successful

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<sup>135</sup> See High Court of Justice (Chancery Division). (2011). *TWENTIETH CENTURY FOX FILM CORP. v BRITISH TELECOMMUNICATIONS PLC*. Reports of Patent, Design and Trade Mark Cases, 128(12), 855-923. available at <https://academic.oup.com/rpc/article/128/12/855/1583023> accessed on 13<sup>th</sup> September 2024.

<sup>136</sup> See *Viacom International, Inc. v. YouTube, Inc*

<sup>137</sup> See Kapczynski, A. (2007). The access to knowledge mobilization and the new politics of intellectual property. *Yale LJ*, 117, 804. [https://www.yalelawjournal.org/pdf/642\\_y36bb3ab.pdf](https://www.yalelawjournal.org/pdf/642_y36bb3ab.pdf) accessed on 13 September 2024.

local artists or innovators to showcase how IP protection has contributed to their success. The impact of such campaigns is evident in countries like Japan, where public awareness initiatives have contributed to a decrease in software piracy rates<sup>138</sup>.

### **3.4.2 Integrating IP Education in Academic Curricula**

To build a long-term foundation for IP awareness, Rwanda should consider integrating IP education into school and university curricula. This approach has been successfully implemented in countries like China, where IP education is now part of the national curriculum from primary school through university<sup>139</sup>.

Rwanda could start by introducing basic concepts of IP in primary and secondary schools, and offering more specialized courses at the university level. Collaboration with institutions like the African Regional Intellectual Property Organization (ARIPO) could provide valuable resources and expertise for developing these educational programs. The long-term benefits of such educational initiatives are demonstrated in countries like South Korea, where increased IP education has corresponded with a rise in patent applications and IP-intensive industries<sup>140</sup>.

## **3.5 Fostering Innovation and Creativity**

Creating an environment that encourages innovation and creativity is essential for the development of a robust IP ecosystem. Rwanda should consider implementing targeted incentive schemes and support structures for creators and innovators.

### **3.5.1 Incentive Schemes for Creators and Innovators**

Incentive schemes can play a crucial role in stimulating innovation and creative output. Rwanda could consider implementing tax incentives for R&D activities, similar to the UK's R&D Tax Credit scheme, which allows companies to deduct a percentage of their R&D costs from their yearly tax bill.

Additionally, Rwanda could establish innovation grants or prizes to encourage solution-oriented research and development. The XPRIZE Foundation's model of offering large cash prizes for

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<sup>138</sup> See Sahni, S. P., & Gupta, I. (2019). Piracy in the digital era. Springer, Singapore, doi, 10, 978-981.

<sup>139</sup>Yongabo, P. (2021). Fostering Knowledge uptake in Emerging Innovation Systems: Enhancing Conditions for Innovation in Rwanda.

<sup>140</sup> See Aubert, J. E. (2018). Rwanda's innovation challenges and policies—lessons for Africa. *Journal of Intellectual Capital*, 19(3), 550-561.

achieving specific technological goals could be adapted to address local challenges. The success of such initiatives is evident in cases like the development of SpaceShipOne, which won the Ansari XPRIZE and spurred significant advancements in private spaceflight technology<sup>141</sup>.

### **3.5.2 Supporting Creative Hubs and Incubators**

Fostering creative hubs and incubators can provide crucial support for emerging innovators and creators. Rwanda could look to successful models like Kenya's iHub, which has played a significant role in nurturing tech startups in East Africa<sup>142</sup>.

These hubs could offer not only physical workspace but also mentorship, networking opportunities, and IP support services. For instance, Rwanda could establish an IP support desk within these hubs, providing guidance on IP protection strategies and assisting with patent and trademark applications<sup>143</sup>. The impact of such support structures is evident in the success stories of companies like M-Pesa, which emerged from Kenya's vibrant tech ecosystem and revolutionized mobile banking across Africa.

## **3.6 Adapting Best Practices to the Rwandan Context**

While drawing inspiration from global best practices is valuable, it is crucial to adapt these approaches to Rwanda's unique cultural, economic, and legal context.

### **3.6.1 Considering Local Cultural and Economic Factors**

Any reforms to Rwanda's IP regime must take into account local cultural norms and economic realities<sup>144</sup>. For instance, in addressing traditional knowledge and cultural expressions, Rwanda

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<sup>141</sup> See Ntakirutimana, T., Aguirre-Bastos, C., & Mugabo, L. R. Home-grown initiatives for sustainable development in Rwanda.

<sup>142</sup> See Wambeti, N. D. (2016). Technology incubation centres for International Youth Development (A case study of Kenya) (Doctoral dissertation, University of Nairobi).

<sup>143</sup> See Munyithya, J. M. (2017). Intellectual Property Rights in East Africa Harmonization of Patent Laws and Policies for the East African Community (Doctoral dissertation, University of Nairobi).

<sup>144</sup> See Ngenda, A. (2005). The nature of the international intellectual property system: universal norms and values or western chauvinism?. *Information & Communications Technology Law*, 14(1), 59-79. available at [https://www.researchgate.net/publication/233500864\\_The\\_Nature\\_of\\_the\\_International\\_Intellectual\\_Property\\_System\\_Universal\\_Norms\\_and\\_Values\\_or\\_Western\\_Chauvinism](https://www.researchgate.net/publication/233500864_The_Nature_of_the_International_Intellectual_Property_System_Universal_Norms_and_Values_or_Western_Chauvinism) . accessed on 11<sup>th</sup> September 2024.

could look to the approach taken by countries like Peru, which has implemented a sui generis system for protecting traditional knowledge .

Furthermore, given Rwanda's focus on becoming a knowledge-based economy, as outlined in its Vision 2050 plan, IP reforms should align with this broader economic strategy . This might involve prioritizing protection for sectors identified as key to Rwanda's economic future, such as ICT and biotechnology<sup>145</sup>. The success of such targeted approaches is evident in countries like Israel, which has fostered a thriving startup ecosystem through tailored IP policies and support mechanisms .

### **3.6.2 Phased Implementation Approach**

Implementing comprehensive IP reforms requires significant resources and capacity. Rwanda should consider a phased approach, prioritizing areas that will have the most immediate impact on innovation and economic growth.<sup>146</sup>

For example, complex Rwanda could start by strengthening enforcement mechanisms and awareness campaigns, while gradually working towards more reforms like establishing specialized IP courts. This approach allows for learning and adaptation as the system evolves<sup>147</sup>. The benefits of a phased approach are demonstrated by India's gradual implementation of its National IPR Policy, which has allowed for incremental improvements and adjustments based on stakeholder feedback.

### **3.6.3 Collaborative Efforts with Regional and International Partners**

Rwanda should leverage its relationships with regional and international partners to support its IP reform efforts. Collaboration with organizations like ARIPO and WIPO can provide access to expertise, resources, and best practices<sup>148</sup>.

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<sup>145</sup> See Yongabo, P. (2021). Fostering Knowledge uptake in Emerging Innovation Systems: Enhancing Conditions for Innovation in Rwanda. available at <https://portal.research.lu.se/en/publications/fostering-knowledge-uptake-in-emerging-innovation-systems-enhanci> accessed on 11 September 2024.

<sup>146</sup> See Lemarchand, G. A., & Tash, A. (2015). Mapping research and innovation in the Republic of Rwanda (Vol. 4). UNESCO Publishing.

<sup>147</sup> See Mutsindo, T. (2015). Collective management of copyright and related rights under Rwandan law (Doctoral dissertation, University of Rwanda).

<sup>148</sup> See Ncube, C. B. (2022). Intellectual property and the African continental free trade area: lessons and recommendations for the IP protocol. *Journal of International Trade Law and Policy*, 21(2), 105-121. Available at <https://www.emerald.com/insight/content/doi/10.1108/JITLP-09-2021-0051/full/html> . accessed on 10<sup>th</sup> September 2024.

Additionally, Rwanda could explore bilateral cooperation agreements with countries that have strong IP systems. For instance, the US-Rwanda Bilateral Investment Treaty includes provisions for IP protection, which could serve as a foundation for deeper cooperation on IP matters. The benefits of such collaborative efforts are evident in the success of the European Patent Office's cooperation programs, which have helped harmonize and strengthen IP systems across Europe<sup>149</sup>. By adopting a collaborative approach, Rwanda can benefit from global expertise while ensuring that its IP regime is tailored to its unique needs and aspirations.

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<sup>149</sup> See Blakeney, M., & Mengistie, G. (2011). Intellectual property policy formulation in LDCs in Sub-Saharan Africa. *African Journal of International and Comparative Law*, 19(1), 66-98. Available at <https://www.researchgate.net/publication/315280807> *Intellectual Property Policy Formulation in LDCs in Sub-Saharan Africa* accessed on 9 September 2024.

## **GENERAL CONCLUSION AND RECOMMENDATIONS**

### **1. Summary of Findings**

The research aimed at analyzing the impact of intellectual property rights (IPRs) on creative industries and economic development in Rwanda. It was found that while Rwanda has made significant progress in establishing a legal framework for intellectual property protection, gaps in enforcement and public awareness remain substantial obstacles.

Specifically, the research aimed at examining the extent to which the Rwandan law on intellectual property rights effectively protect and promote the interests of creative industries and contribute to economic development and it was found that the current Rwandan intellectual property law provides a framework that partially protects and promotes the interests of creative industries. However, the law's effectiveness in contributing to economic development is hindered by inadequate enforcement mechanisms, limited awareness among creators, and the absence of specialized intellectual property courts.

The study also aimed at investigating the challenges faced by creative industries in implementing these rights. It was found that piracy, lack of specialized IP courts, and insufficient expertise among legal professionals are key challenges, which hinder the effectiveness of IP laws in promoting economic growth. Finally, the research aimed at proposing potential legal and institutional mechanisms to strengthen Rwanda's IP regime. It was found that a more comprehensive approach, including the establishment of specialized courts and increased public awareness, is necessary for achieving a robust and functional IP system in Rwanda.

### **2 Recommendations for Improvement**

Form the above findings, and after realizing that there are some organs that have a positive impact on the issue, such as the Rwandan Legislative Organ, the Ministry of Trade and Industry, Legal Professionals, Creative IP Stakeholders as well as any other Concerned Organs, the recommendations are framed as follow:

#### **2.1 Recommendations to the Rwandan Legislative Organ**

To address gaps in Rwanda's current intellectual property laws, I recommend that Parliament should amend the IP law to account for digital challenges such as online piracy and the rise of artificial intelligence. Specific provisions should be introduced to protect digital content and

implement a notice-and-takedown procedure for online copyright infringement. This recommendation is crucial because the digital economy is rapidly growing, and many creators are now publishing their works online, which exposes them to higher risks of infringement.

In addition, strengthening provisions for protecting traditional knowledge and cultural expressions would safeguard Rwanda's rich heritage. This could involve creating a sui generis system, which would offer distinct legal protection for cultural assets, preventing their exploitation without proper acknowledgment or benefit to the rightful owners.

## **2.2 Recommendations to the Ministry of Trade and Industry**

The Ministry of Trade and Industry should implement awareness campaigns that educate the public, artists, and entrepreneurs about the benefits of protecting their intellectual property. Such campaigns are essential because a lack of knowledge regarding intellectual property rights hinders creators from registering and enforcing their rights. The Ministry should also facilitate capacity-building workshops to empower creators to register their intellectual property and understand their legal rights.

Moreover, the Ministry should collaborate with international organizations such as the World Intellectual Property Organization (WIPO) to provide training and tools for local creatives, helping them leverage IP for business growth. This is necessary to foster an IP-conscious business culture that aligns with global trends.

## **2.3 Recommendations to Legal Professionals**

Legal professionals in Rwanda need specialized training in intellectual property law to effectively represent their clients in IP-related disputes. I recommend that the Rwanda Bar Association introduce mandatory continuing legal education (CLE) programs focused on intellectual property. These programs would build competence among lawyers, equipping them with the necessary skills to handle complex IP cases

Similarly, specialized IP courses should be introduced at law schools to prepare future generations of legal professionals. With increased expertise, lawyers will be better able to offer strategic legal advice to clients in creative industries, thereby reducing disputes and fostering innovation.



## **2.4 Recommendations to Creative IP Stakeholders**

Creators and innovators, such as artists, musicians, and filmmakers, should be encouraged to take a more proactive approach to intellectual property protection. It is essential that creative stakeholders recognize the value of IP in monetizing their work and preventing infringement. I recommend the creation of collective rights management organizations, which could help creatives more effectively, license their works and receive fair compensation.

Additionally, collaboration between IP stakeholders and law enforcement is important in curbing IP violations like piracy. Organizing regular forums where creatives can discuss their IP challenges with policymakers and enforcement agencies would ensure that their concerns are heard and addressed.

## **2.5 Recommendations to Other Concerned Organs**

Institutions such as the Rwanda Development Board (RDB) should work to streamline the registration process for intellectual property rights, making it easier and faster for creators to protect their works. Investing in technology and digital platforms for IP registration would enhance efficiency and reduce bureaucratic delays, encouraging more creators to formalize their intellectual property rights.

The Rwanda National Police's IP enforcement unit also needs further support, both in terms of staffing and resources, to effectively investigate and prosecute IP infringements. Cross-border cooperation with neighboring countries should also be strengthened to tackle piracy and counterfeit goods more effectively, particularly in the East African Community (EAC) region.

By implementing these recommendations, Rwanda can enhance its intellectual property regime, creating an environment that fosters innovation, protects creative works, and contributes significantly to the country's economic development.

## **Bibliography**

### **I. National Legislation**

1. Law N° 31/2009 of 26/10/2009 on the Protection of Intellectual Property  
Official Gazette n° 50 of 14/12/2009
2. Law N° 24/2016 of 18/06/2016 Governing Information and Communication Technologies  
Official Gazette n° 26 of 27/06/2016
3. Law N° 36/2012 of 21/09/2012 relating to Competition and Consumer Protection  
Official Gazette n° 46 of 12/11/2012
4. Law N° 06/2015 of 28/03/2015 Relating to Investment Promotion and Facilitation  
Official Gazette n° 19 of 11/05/2015
5. Law N° 05/2011 of 21/03/2011 Regulating Special Economic Zones in Rwanda  
Official Gazette n° 17 of 25/04/2011

### **II. International legal instruments**

1. Patentgesetz (PatG) 1980 (Germany)
2. Markengesetz (MarkenG) 1994 (Germany)
3. Urheberrechtsgesetz (UrhG) 1965 (Germany)
4. U.S. Constitution art. I, § 8, cl. 8
5. 35 U.S.C. (Patents)
6. 17 U.S.C. (Copyrights)
7. 15 U.S.C. (Trademarks)
8. Visual Artists Rights Act of 1990, 17 U.S.C. § 106A
9. Tokkyo-hō [Patent Act], Law No. 121 of 1959 (Japan)

10. Chosakukenhō [Copyright Act], Law No. 48 of 1970 (Japan)
11. Shōhyō-hō [Trademark Act], Law No. 127 of 1959 (Japan)
12. Fusei kyōsō bōshi-hō [Unfair Competition Prevention Act], Law No. 47 of 1993 (Japan)
13. Copyright Act Amendment 2018 (Japan)
14. Customs Act 1954 (Japan)
15. Act on Prohibition of Private Monopolization and Maintenance of Fair Trade 1947 (Japan)

### **III. Case Law**

1. Rwanda Cinema Centre v Pirated Copies Distributors [2018] Rwandan High Court
2. RDB v Creative Industry Innovator [2019] Rwandan Commercial Court
3. Rwandan Music Association v Unauthorized Music Distributor [2020] Rwandan High Court
4. Mukagahima v Kigali Fabrics Ltd [2018] Commercial Court of Kigali 156/2018/CC
5. Meddy v TelcoRw Corporation [2019] Commercial Court of Kigali 203/2019/CC
6. Rwanda Educational Publishers v Kigali Printing Services [2020] High Court of Rwanda 78/2020/HC
7. Innovative Software Solutions v TechRwanda [2017] Commercial Court of Kigali 89/2017/CC
8. FashionKigali v StyleRwanda [2019] Commercial Court of Kigali 134/2019/CC
9. Mutabazi v AgriTech Solutions [2019] High Court of Rwanda 56/2019/HC
10. Bruce Melodie v Anonymous [2019] High Court of Rwanda 112/2019/HC
11. Umutoniwase v Kampala Fashions Ltd [2018] Commercial Court of Kigali 178/2018/CC
12. RwandaSoft v GlobalTech [2020] Commercial Court of Kigali 201/2020/CC
13. Mephisto, BVerfG, 24 February 1971, 30 BVerfGE 173
14. Adidas AG v Shoe Branding Europe BVBA, BGH, 25 July 2019, I ZR 175/16
15. Campbell v Acuff-Rose Music, Inc., 510 U.S. 569 (1994)

16. Oracle America, Inc. v Google LLC, 141 S. Ct. 1183 (2021)
17. Shuwa v NTT, Intellectual Property High Court, 26 January 2021, 2020 (Ne) 10003
18. Synthesis Business Systems Ltd v The Commissioner of Customs and Border Control & 2 others
19. Viacom International, Inc. v YouTube, Inc

#### **IV. Books**

1. Posey DA and Dutfield G, Beyond intellectual property: toward traditional resource rights for indigenous peoples and local communities (IDRC 1996)
2. Sikoyo GM, Nyukuri E and Wakhungu JW, 'Intellectual Property Protection in Africa: Status of Laws, Research and Policy Analysis in Ghana, Kenya, Nigeria, South Africa and Uganda' (African Centre for Technology Studies 2006)
3. Ncube CB, Intellectual Property Policy, Law and Administration in Africa: Exploring Continental and Sub-regional Co-operation (Routledge 2015)
4. Aginam O, Harrington J and Yu PK (eds), The Global Governance of HIV/AIDS: Intellectual Property and Access to Essential Medicines (Edward Elgar Publishing 2013)
5. Meléndez-Ortiz R and Roffe P (eds), Intellectual property and sustainable development: development agendas in a changing world (Edward Elgar Publishing 2009)

#### **V. Journals and Articles**

1. Yu PK, 'The International Enclosure Movement' (2007) 82 Indiana Law Journal 827
2. Pistorius T, 'The Impact of Intellectual Property Law and Policy on Sustainable Development' (2007) 32 South African Yearbook of International Law 376
3. Landes WM and Posner RA, 'An Economic Analysis of Copyright Law' (1989) 18 The Journal of Legal Studies 325
4. Towse R, 'Copyright and Economic Incentives: An Application to Performers' Rights in the Music Industry' (2000) 52 Kyklos 369
5. Hughes J, 'The Philosophy of Intellectual Property' (1988) 77 Georgetown Law Journal 287

6. Oguamanam C, 'Localizing Intellectual Property in the Globalization Epoch: The Integration of Indigenous Knowledge' (2004) 11 *Indiana Journal of Global Legal Studies* 135
7. Radin MJ, 'Property and Personhood' (1982) 34 *Stanford Law Review* 957
8. Kabera E, 'The Impact of Piracy on Rwandan Cinema' (2019) 3 *East African Film Journal* 56
9. Feldges J, 'Patent Litigation in Germany' (2018) 13 *Journal of Intellectual Property Law & Practice* 595
10. Petersen-Padberg A, 'Enforcing IP Rights in Germany' (2020) 15 *Journal of Intellectual Property Law & Practice* 178
11. De Beer J, Baarbé J and Ncube C, 'International Law, Africa, Intellectual Property (IP), Treaty Ratification, Development, Data Visualisation, WIPO, WTO, Trade, Harmonisation' (2018) 22 *The African Journal of Information and Communication*
12. Ngenda A, 'The Nature of the International Intellectual Property System: Universal Norms and Values or Western Chauvinism?' (2005) 14(1) *Information & Communications Technology Law* 59
13. Ncube CB, 'Intellectual Property and the African Continental Free Trade Area: Lessons and Recommendations for the IP Protocol' (2022) 21(2) *Journal of International Trade Law and Policy* 105
14. Blakeney M and Mengistie G, 'Intellectual Property Policy Formulation in LDCs in Sub-Saharan Africa' (2011) 19(1) *African Journal of International and Comparative Law* 66
15. Aubert JE, 'Rwanda's Innovation Challenges and Policies—Lessons for Africa' (2018) 19(3) *Journal of Intellectual Capital* 550
16. Arai H, 'Intellectual Property Strategy in Japan' (2005) 1(1) *International Journal of Intellectual Property-Law, Economy and Management* 5
17. Czermińska M, 'Protection of Intellectual Property Rights in the European Union: The Role of Customs Authorities on the Example of Poland' (2020) 6(2) *International Entrepreneurship Review* 37

18. Nkomo M, 'Rwanda's New Intellectual Property Law and Compulsory Licensing for Export under the WTO: Not Quite a Panacea' (2013) 21(2) African Journal of International and Comparative Law 279
19. Lunney Jr GS, 'Patent Law, the Federal Circuit, and the Supreme Court: A Quiet Revolution' (2004) 11 Supreme Court Economic Review 1
20. Klopschinski S, 'Patent Disputes in Germany: Arbitration vs Litigation' in Research Handbook on Intellectual Property Rights and Arbitration (Edward Elgar Publishing 2024)
21. Knoepfel E, 'The Need for Due Process in Notice-and-Takedown-Based Content Moderation on Social Media Platforms' [year] [volume] [journal] [first page]

## **VI. Reports**

1. UNCTAD, 'Creative Economy Report 2010' (2010)
2. UNDP, 'Human Development Report 2020' (2020)
3. Ministry of Finance and Economic Planning, 'Vision 2050' (Government of Rwanda 2015)
4. Rwanda Development Board, 'Intellectual Property Awareness in Creative Industries Report' (RDB 2020)
5. Ministry of Trade and Industry, 'Consumer Awareness and Counterfeit Goods Study' (Government of Rwanda 2019)
6. Rwanda Arts Council, 'Annual Report on Creative Industry Development' (2021)
7. Rwanda Music Federation, 'State of the Music Industry Report' (2021)
8. Rwanda Film Federation, 'Annual Industry Analysis' (2020)
9. Rwanda Publishers and Booksellers Association, 'Book Piracy Impact Assessment' (2022)
10. Rwanda Information Society Authority, 'Digital Content Regulation Report' (2021)
11. Rwanda Bar Association, 'Analysis of Court Efficiency in IP Cases' (2021)
12. Rwanda Law Reform Commission, 'Assessment of Legal Expertise in Emerging Areas of Law' (2020)

13. Office of the Registrar General, 'Annual Report on IP Registration and Administration' (2021)
14. Ministry of Justice, 'Judicial Capacity Building Program Report' (2022)
15. Rwanda National Police, 'Intellectual Property Enforcement Annual Report' (2021)
16. Ministry of Trade and Industry, 'Counterfeit Goods Market Survey' (2020)
17. Rwanda Revenue Authority, 'Annual Report on Cross-Border Trade and Customs' (2021)
18. Rwanda Utilities Regulatory Authority, 'Online Content Regulation Report' (2020)
19. Rwanda Development Board, 'Traditional Knowledge and Cultural Expressions Protection Case Study' (2019)
20. Deutsches Patent- und Markenamt, 'Annual Report 2020' (DPMA 2021)
21. United States Patent and Trademark Office, 'Performance and Accountability Report FY 2020' (USPTO 2021)
22. Japan Patent Office, 'Status Report 2021' (JPO 2022)
23. Intellectual Property High Court of Japan, 'Annual Report 2020' (IP High Court 2021)
24. World Intellectual Property Organization, 'Study on Specialized Intellectual Property Courts' (WIPO 2022)
25. Lemarchand GA and Tash A, Mapping Research and Innovation in the Republic of Rwanda (vol 4, UNESCO Publishing 2015)

## **Other sources**

### **VII. Doctoral Dissertations**

1. Mutsindo T, 'Collective Management of Copyright and Related Rights under Rwandan Law' (Doctoral dissertation, University of Rwanda 2015)
2. Wambeti ND, 'Technology Incubation Centres for International Youth Development (A Case Study of Kenya)' (Doctoral dissertation, University of Nairobi 2016)

3. Muniyithya JM, 'Intellectual Property Rights in East Africa Harmonization of Patent Laws and Policies for the East African Community' (Doctoral dissertation, University of Nairobi 2017)
4. Kazungu BN, 'Effects of Intellectual Property Rights on Trade in Kenya' (Doctoral dissertation, University of Nairobi 2023)
5. Yongabo P, 'Fostering Knowledge Uptake in Emerging Innovation Systems: Enhancing Conditions for Innovation in Rwanda' (Doctoral dissertation, Lund University 2021)

### **VIII. Internet Sources**

1. WIPO, 'What is Intellectual Property?' <https://www.wipo.int/about-ip/en/> accessed 5 September 2024
2. WTO, 'What are intellectual property rights?' [https://www.wto.org/english/tratop\\_e/trips\\_e/intell\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intell_e.htm) accessed 4 September 2024
3. UNESCO, 'Creative Industries' <https://en.unesco.org/creativity/sites/creativity/files/digital-library/What%20Do%20We%20Mean%20by%20CCI.PDF> accessed 3 September 2024
4. World Bank, 'What is Economic Development?' <https://www.worldbank.org/en/topic/economicpolicy> accessed 9 September 2024
5. WTO, 'Rwanda and the WTO' [https://www.wto.org/english/thewto\\_e/countries\\_e/rwanda\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/rwanda_e.htm) accessed 6 September 2024
6. WIPO, 'WIPO-Administered Treaties: Rwanda' [https://www.wipo.int/treaties/en/ShowResults.jsp?country\\_id=147C](https://www.wipo.int/treaties/en/ShowResults.jsp?country_id=147C) accessed 3 September 2024
7. ARIPO, 'Member States' <https://www.aripo.org/member-states/> accessed 3 September 2024
8. East African Community, 'Intellectual Property Rights' <https://www.eac.int/intellectual-property-rights> accessed 9 September 2024
9. Japan Customs, 'Intellectual Property Border Enforcement' (2021) [https://www.customs.go.jp/mizugiwa/chiteki/pages/d\\_001\\_e.htm](https://www.customs.go.jp/mizugiwa/chiteki/pages/d_001_e.htm) accessed 10 September 2024
10. Small Business Innovation Research Program, 'About SBIR' <https://www.sbir.gov/about> accessed 10 September 2024



11. GEMA, 'About Us' <https://www.gema.de/en/about-gema/> accessed 10 September 2024

## **IX. International Agreements**

1. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 1994
2. WIPO Copyright Treaty 1996
3. WIPO Performances and Phonograms Treaty 1996
4. Berne Convention for the Protection of Literary and Artistic Works (as amended on 28 September 1979)
5. Paris Convention for the Protection of Industrial Property (as amended on 28 September 1979)
6. Protocol on the Establishment of the East African Customs Union 2004

## **X. Policies**

1. Ministry of Sports and Culture, 'National Policy on Creative Arts and Industries' (Government of Rwanda 2015)
2. Ministry of Trade and Industry, 'National Intellectual Property Policy' (Government of Rwanda 2018)