

**COMMENTS ON DRAFT INTELLECTUAL PROPERTY POLICY OF THE FEDERAL
DEMOCRATIC REPUBLIC OF ETHIOPIA**

Introduction

About this Submission:

The International Trademark Association (INTA) strongly supports the goal of this comprehensive Intellectual Property (IP) Policy for all nations, and appreciates the opportunity to contribute to the consultation process for Ethiopia under the guidance of the Ethiopian Intellectual Property Office (EIPO). While acknowledging the complexity of this task, INTA greatly commends the efforts of EIPO and appreciates the inclusiveness of the method. INTA further takes note: “*The Government of Federal Democratic Republic of Ethiopia (FDRE) recognizes the role of intellectual property in meeting national and sectoral development goals and enhancing socio- economic development.*” Although mindful of the holistic approach of the draft IP Policy, INTA’s expertise is in the area of trademarks, therefore, its input will focus on trademark policy and related rights.

About INTA:

Founded in 1878, INTA is the world’s oldest and largest brand owners association. With a membership of over 7,200 companies, INTA represents over 31,000 trademark professionals in diverse capacities: multinational corporations, businesses of all sizes, law firms and other professionals, academic institutions, and not-for-profit organizations from 190 countries. The mission of INTA is to encourage and support best practices and excellence in the field of trademarks and intellectual property, and protection of rights for brand owners and consumers, as well as foster economic growth and innovation through awareness of the importance and development of brands. INTA is dedicated to the support and advancement of trademarks and related intellectual property rights as elements of fair and effective national and international commerce. To achieve this goal, INTA recently unveiled its new Strategic Plan. The 2018-2021 Strategic plan is articulated around the following areas namely: 1) Promote the value of trademarks and Brands, 2) Reinforce Consumer Trust and 3) Embrace Innovation and Change.

INTA has established a number of committees and subcommittees which consider various aspects the law and enforcement of trademarks and related rights. The committees and subcommittees are comprised of members who are experienced professionals worldwide in

intellectual property. Through its dedicated staff and volunteer committee members, INTA works closely with national trademark offices and other departments and government ministries around the world. INTA makes suggestions on practices, procedures, operations and regulations, and analyzes proposed legislative and regulatory developments relating to trademark laws, registration systems and enforcement. INTA also provides workshops to Registrars, the Judiciary and other officials to share information and network with other offices.

The following INTA committees were consulted for comments and suggestions to the Ethiopian National Intellectual Property Policy and Strategy and their comments are incorporated herein: Trademark Office Practices SC for Africa; Indigenous Rights; Enforcement; Emerging Issues; Geographical Indications Brands & Innovation and Copyright. Notably, INTA is one of the first IP organizations to recognize the significance of indigenous intellectual property rights by establishing a separate dedicated committee to, inter alia, consider and advise the organization of their value and impact on traditional IP rights.

A) General Comments

INTA recognizes the importance of inventions and patents to the economic development of Ethiopia as mentioned in the second Growth and Transformation Plan (GTP II). However, as Ethiopia's IP Policy is being developed, we propose to strike a fair balance between creation, development and enforcement of other IP rights such as trademarks that support the development of local and regional brands. To be sure, trademarks are not only indispensable to the development of an inclusive economy, but protect consumers against harmful counterfeiting and/or infringement which adversely affects the livelihood and well-being of all the people of Ethiopia and the region.

INTA suggests that lawmakers and stakeholders involved in revamping Ethiopia's Intellectual Property infrastructure consider incorporating the following important features as part of its policy:

1. Encourage local small and medium size enterprises (SME) to innovate, create and develop brands and to use the trademark registration system for protection.
2. Support the modernization and competitiveness of Ethiopian industry by streamlining registration procedures and strengthening the value of trademarks and designs.
3. Improvement of IP management competency to make consumers and business leaders value the importance of trademark intensive industries in Ethiopia.
4. Encourage the IP service industry in Ethiopia to increase the relevance of IP in the nation, promote creativity and avoid IP infringement. Emphasize not only the need to protect Ethiopians from the harm caused by counterfeit goods, but the contributions to economic growth spurred by innovation and protecting IP rights.
5. Become the regional leader in the promotion and protection of IP rights.
6. Address challenges obstructing IP creation, foreign direct investment, responsible knowledge transfer and innovation, and provide priority arrangements for addressing challenges in the Ethiopian IP system.

7. Coordinate the approach to creating awareness about IP among Ethiopians, including the need to protect nationally owned IP that is related to indigenous resources, traditional cultural expressions and traditional knowledge.
8. Create a system for the protection of traditional knowledge which will safeguard misappropriation and exploitation as well as promote further research and development into products and services based on traditional knowledge but balanced holistically with existing IP protections and rights.
9. Ensure that trademark rights and other intellectual property rights are “balanced” both in overall national policies and in their enforcement as a way to ensure consumer awareness and protection.
10. Increase awareness within various audiences such as universities, the media with respect to the importance of IP protection and respect for IP rights.

B) Specific Comments

IP a valuable tool for economic development

A comprehensive study on the economic and personal benefits of IP to Ethiopia and its people as suggested above also would reveal ways in which IP can be generated. The creation of brands and use of the trademark system for protection is critical to this process, particularly by indigenous companies and businesses. INTA recommends that such a study include an IP audit or base-line survey in various sectors in cooperation with stakeholders. Although the study must include all companies, particular attention should be noted for small- and medium-size industries, including the informal sector whose innovation and economic contributions to the overall economy has yet to be fully appreciated or utilized for the development of the economy. The latter have already been recognized in many countries as a significant force in creation of new industries, markets and jobs.

INTA's Brands and Innovation Committee has looked into the ways in which brands impact innovation and vice versa. The conclusion reached is that there is a positive correlation between brands and innovation such that they foster, promote and drive economic growth (to obtain a copy please visit <https://www.inta.org/TrademarkBasics/Pages/Presentations.aspx>). Innovators are able to earn income and get a return on their investment through commercialization. This not only has a direct impact on the various tax revenues which the government is able to collect when companies are successful, but also creates and supports down-stream enterprises.

INTA suggests that the government, private sector (formal and informal) and the public at large will benefit from the use and protection of trademarks as well as geographical indications and traditional knowledge. Nonetheless, it is important that the Ethiopian IP Policy ensures a balanced approach which includes protection of prior rights while recognizing other forms of intellectual property.

Conduct Study on the Value of IP

INTA supports the Government of Ethiopia's commitment to promote and increase awareness of the importance of IP to achieve inclusive and sustainable economic growth. In furtherance of these important goals, it may be helpful to the government to conduct an in-depth study, as has other governments, to demonstrate the overall value of IP. In considering establishment of IP Policy, several countries have undertaken such studies, for example, see:

- 2017, "The Economic Contribution of Trademark-Intensive Industries in Indonesia, Malaysia, the Philippines, Singapore, and Thailand"
<https://www.inta.org/Communications/Pages/Impact-Studies.aspx>
- 2017 "the New gTLD Cost Impact Survey"
http://www.inta.org/INTABulletin/Pages/Internet_Update_7212.aspx
- 2017 "The Economic Impacts of Counterfeiting and Piracy"
http://www.inta.org/Communications/Documents/2017_Frontier_Report.pdf
- 2016, Latin America "Trademarks in Latin America Study"
https://www.inta.org/Press/Pages/Impact_Study_LatAm_2016_EN.aspx
- 2013, European Commission "Impact Intellectual Property Intensive Industries in the European Union" www.oami.europa.eu/ohimportal/en/web/observatory/ip-contribution
- 2012, US government "Intellectual Property and the US Economy"
www.uspto.gov/news/publications/IP_Report_March_2012.pdf

Geographical Indications

There is currently no explicit protection for geographical indications in Ethiopia but GIs may be protected indirectly by the Trademark Registration and Protection Proclamation 501/2006.

In this regard, article 6(1)(e) of the Trademark Proclamation provides that a trade mark which consists exclusively of signs or indications which designate the geographical origin of goods or services may not be registered. Furthermore, article 6(1)(h) of the Trademark Proclamation provides that a trademark that is likely to mislead the public or the business community, in particular as regards the geographical origin of the goods or services concerned, or their nature or characteristics may not be registered. Lastly, provision is made in article 18 of the Trademark Proclamation for the registration of collective trade marks in Ethiopia. It should be noted that the Trademark Proclamation does not make provision for certification marks.

In view of the few mentions to GIs in the National Intellectual Property Policy and Strategy, it appears that the protection of GIs is not being considered very closely at this point. Aside from mention being made that new laws should be enacted to protect geographical indications; it being acknowledged that geographical indications are not yet protected in Ethiopia; and a definition being provided of a GI, the policy does not address the possible solutions to addressing the non-protection of GIs in Ethiopia. To this extent it is difficult to provide commentary from a GI perspective at this point.

It may be worth pointing out, however, that the definition of what a GI is in the policy corresponds largely with the definition provided in the TRIPS agreement. In this regard, the TRIPS agreement provides in Article 22 that geographical indications are, for the purpose of the Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. Furthermore, the international community generally categorizes GIs as intellectual property rights. Therefore, insofar as the policy identifies GIs as part of the IP issues that Ethiopia should address, and given that the definition of GIs nearly mirrors the definition in the TRIPS agreement, it appears that guidance is being sought from the international community in respect of bringing Ethiopia's IP laws (in general) and GI laws (in particular) in line with international best practice.

In short, before any useful comments can be made in respect of Ethiopia's intended reforms for GIs in particular, there has to be drafted appropriate law that may be considered. The intention to draft such laws is clearly highlighted as a priority in the policy, which is at least a step in the right direction.

Legal and Legislative Framework

In order to further harmonization, INTA believes it is in the interest of Ethiopia to encourage and make available to businesses the use of national, regional and international systems of registration which are accessible and affordable for the protection of trademarks and brands.

If Ethiopia were to accede to the Madrid Protocol, Ethiopian businesses will have to register and obtain protection of their brands in over 190 countries and regional systems in the world through filing of an application in Ethiopia. This is essential for the promotion and protection of local innovations and brands who are keen to compete on the global market. This system will enhance the *Made in Ethiopia brand* and also boost foreign brand owners' confidence in the country. This would benefit local businesses by enhancing their prospects of reaching and excelling not only at the national level but also in global markets.

INTA recommends that a review of all legislation and international treaties be undertaken to ensure harmonization and consistency with all aspects of IP legislation. Special attention should be placed on availability of registration procedures and compliance with or accession to international treaties.

It is important that the Ethiopian IP Policy clearly sets out the position for protection and use of brands and domain names on the Internet. There must also be consideration of the system for enforcement of Intellectual Property rights. The existing legislation should be reviewed with the input from those officials responsible for enforcement, i.e., administrative officers, police force, customs, judiciary, etc., to consider ways in which to streamline and make more timely and efficient the hearing and resolution of complaints and claims related to infringement and counterfeit of trademarks and brands.

IP Administration and Management

It is recommended that the IP Policy consider the administration and management of IP with respect to registration and promotion of IP in Ethiopia. It is suggested that a review be undertaken of the existing system and consideration be given to establishing and/or improving:

- Financial autonomy for the administration and maintenance of registration and other systems for IP;
- Qualifications, training of examiners and adequate number to sustain community outreach program for emergent businesses;
- Clear examination guidelines and a fair system of appeal to address grievances;
- Clear procedure and predictable timeframes for processing applications, etc.;
- Transparency; and
- State of the Art Technology.

Anticounterfeiting

In order to enhance the strategies outlined in 7.10, it is suggested that the adoption of relevant technological solutions as a tool to restrict and enforce both online and offline counterfeiting e.g. requiring goods to have stamps that contain authentication and tracing information;. Moreover a clear indication of how generic medicine and compulsory licensing are handled in IPRs enforcement.

More specifically,

1. Clearly defining counterfeits and limiting the enforcement provisions to counterfeits will mean that generic products like generic medicines, which do not infringe trademark rights, will not be subject to seizure under the trademark laws.
2. One of the main arguments to have weaker counterfeit measures is the fear of stopping generic drugs from reaching those who need them.
3. However, counterfeit medicines that enter the Ethiopian market are misbranded to intentionally mislead consumers and often do not contain the proper active ingredients – making them a danger to the Ethiopian public.
4. Strong IPR enforcement provisions are intended to make clear that only the most serious type of infringement, counterfeiting, is the target for customs action.
5. Furthermore, the definitions of counterfeiting and counterfeit goods should be revisited to specifically deal with the difference between generics and counterfeit to prevent preventing law enforcement agencies from seizing or confiscating generics.
6. Customs officials will have to be trained to know the difference between generic goods and counterfeit goods, but this training will protect the public from these hazardous counterfeit goods.
7. In this instance, keeping counterfeit goods out of the stream of commerce would be good for Ethiopia since it will keep dangerous counterfeits out of the country.

On the enforcement side, there is a need to introduce harsh penalties in 7.10 a). Furthermore capacity building needs to be continuous including refresher courses to ensure all enforcement stake holders are up to date on emerging enforcement trends. 7.10 d). There ought to be an emphasis on building the investigative capacity of the police and customs officials which is a crucial enforcement step.

The role of a competition authority/ regime in regulating anti-competitive conduct with regard to IPRs, technology transfer and dissemination ought to be included. Last but not least, the right to information needs to cover an order for an infringer to provide a right holder with the identity of third parties involved in the production and distribution of infringing goods or services and of their channels of distribution (perhaps this can be included in the review and amendment of existing laws).

Traditional knowledge, expressions of folklore, and genetic resources

INTA notes that the policy proposes to introduce sui generis legislation that deals with the protection of traditional knowledge and expressions of folklore, and also to use IP laws to protect and address concerns on traditional knowledge and expressions of folklore.

INTA is supportive of the recognition of traditional knowledge and expressions of folklore, but believes that any protection should not minimize vested trademark rights, should provide a degree of certainty for indigenous communities and trademark owners alike, and that the well-established intellectual property principles of territoriality, exclusivity, priority, and notice should be included in any laws which have the aim of protecting traditional knowledge and expressions of folklore.

Enforcement and Adjudication

Since there are likely many departments and offices as well as the court system involved in various aspects of enforcement and adjudication of rights, it is suggested that all stakeholders are identified and a task force or committee be formed to coordinate efforts and identify resources and shortcomings in the current systems.

Formulating an outreach program to educate the public and particularly youth about counterfeiting and its negative impact on the economy and potential danger to health is a key aspect which should be incorporated into the IP Policy. INTA has an UNREAL Campaign (to obtain more information please visit <http://www.inta.org/Advocacy/Pages/UnrealCampaign.aspx>) for youth ages 14 to 18 which has been well received in cities in several countries.

Finally it is suggested that there must be continuous awareness workshops to assist those in enforcement to understand not only the latest legal trends but also the many issues, technology such as the blockchain technology (blockchain technology could be implemented in order to provide an efficient and robust way of recording ownership and transactions in patents and trademarks) and other challenges facing brand owners and consumers involving counterfeit brands.

INTA has undertaken various studies and policy dialogue on the protection and enforcement of trademark rights and related rights in Thailand, European Union, and China, and would be pleased to make them available in Ethiopia.

Internet policies

Boosted by the increased use of mobile devices and fast growing technology, e-commerce contributes significantly to economic development. Representing a fundamental change in the way that trade is conducted, e-commerce offers opportunities as well as challenges to various stakeholders including governments, entrepreneurs/innovators, consumers and trademark practitioners. In this regard, INTA advocates for Internet laws and policies safeguarding the interest of the private sector and the public at large.

C) Conclusion

INTA welcomes the admirable efforts made by EIPO to put forth this Draft IP Policy. Our inputs are aimed at contributing positively to the process, sharing international best practices and ensuring that new IP infrastructure contributes to support the Government's willingness to build a world class economy. INTA, through its various committees including the Global Advisory Council for Africa stands ready to participate in any further discussions. If you need further explanation or information, please contact INTA's Representative for Africa and the Middle East, Mr. Tat-Tienne Louembe TLouembe@inta.org.

Thank you for the opportunity to present our views and suggestions to you.