

POTENTIALS:

INSURANCE COVER FOR INTELLECTUAL PROPERTY MISAPPROPRIATION IN NIGERIA

THOUGHT LEADERSHIP BY:

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The relationship of intellectual property (IP) to the profitability of businesses in the present-day competitive business landscape is undeniable. Breach of IP rights will have a prejudicial or damnable effect on different stakeholders – individuals, governments and corporate entities. IP, a form of property is a composite term that includes copyright, patents, designs, trade secrets, trademarks, etc. *Just like a physical property can be stolen, mutilated or destroyed, an IP as property, though abstract, can equally be stolen, infringed or misappropriated.* The devastating effect of these ‘harmful’ actions on a business can sometimes lead to loss of fortune, goodwill or even market leadership.

It is therefore prudent to adopt all kinds of safety mechanisms to forestall unguided disclosure and misappropriation of such IP. Whilst protective measures like enacting laws for regulation and safety, together with the availability of judicial remedies in case of infringement or unauthorised disclosure have been put in place³ for quite some time, these measures do not prevent the consequences of an eventual prejudicial disclosure. Some of these exposures could have an impact on the IP holder’s income, through loss in expected earnings and costs of enforcement claims and challenges of infringement.

At this point, the use of insurance as a form/mode of prudent risk management can offer some solace for such businesses. This article explores how insurance can be utilised as an IP risk management tool by businesses. Leveraging insights from experience in foreign jurisdictions, it will also evaluate current status, prospects, and suggest modes of scaling up insurance covering for IP in Nigeria.

¹ The author is grateful for insights obtained from industry practitioners and Mr. Afolabi Elebiju (*Principal, LeLaw*) in the course of preparing this article. However, the author remains wholly responsible for the views expressed herein, including any errors therefrom.

² The concept of IP as a property is borne out of the right of the owner to control the use of the property to the exclusion of another, the right to transfer the right to any other person in form of license or outright sale and the right to waive enforcement of infringement claims where there has been misappropriation. See Robert P. Merges, ‘*What Kind of Rights Are Intellectual Property Rights?*’ in R. Dreyfuss and J. Pila, (eds.), ‘*Oxford Handbook of IP Law*’, (Oxford University Press 2018), p. 61-62: <https://www.law.berkeley.edu/wp-content/uploads/2017/07/What-Kind-of-Rights-are-Intellectual-Property-Rights.pdf> (accessed 12.04.2021).

³ In Nigeria, there are the *Copyright Act, Cap. C28, Laws of the Federation of Nigeria (LFN) 2004*; *Patents and Designs Act, Cap. P2, LFN 2004*; and *Trademarks Act, Cap. T13, LFN 2004*. Apart from these, the judicial decisions of superior courts also regulate IP in Nigeria.

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IP Insurance as a Means of Risk Management

In the words of Moorcraft, “IP is that seed that can blossom into an entire business empire.”⁴ Beyond that, it is the core of any business that drives the whole business and determines its continuance and relevance. IP comprises a set of exclusive rights to exclude others from making, copying, or using certain intangible creations of the human mind.⁵ Insurance on the other hand is a form of security for an insured to be indemnified of what would have been suffered at the happening of a contingency.

The origin of insurance reportedly dates back to 2000 B.C., when shipping merchants in Babylonia, in agreement with traders, used their ships to fund their voyage.⁶ Reflective of the historic transformation of the insurance industry ever since is that the need for risk management for all types of human endeavours has been progressively increasing.

The need for risk management for IP is borne out of the capitalisation potential of the intellectual inputs to the economy. IP drives innovation, which in turn, mostly results in income. *IP insurance is a system of economic relations concerning the protection of valuable interests of intellectual property subjects in case of an insured event occurring provided at the expense of the monetary funds formed by insurers from paid insurance premiums.*⁷

IP insurance has many advantages for an organisation. One of such is



to check/overcome unfair competition from ‘big’ companies and help level the playing field. Sometimes, big corporations because of their deep pockets income and their ability to defend any action to any length, may infringe on the IP rights of small and medium-scaled enterprises (SMEs). Where this happens, SMEs without enough resources to enforce their rights may ‘sleep’ on such rights, accept lower royalties arising from out-of-court settlements or move on to develop another IP, essentially starting afresh. However, if the SME has an IP insurance policy in place which could fund the resulting litigation, it is in a stronger position to enforce its rights against IP ‘predators’ and infringers.

Another big advantage of IP insurance is the negotiating leverage or strength it affords, such an IP owner in securing funds or use of the IP as collateral. Oftentimes, people apply for funding or use

existing IP as collateral to conduct further, or new research and the fact that there is IP insurance may enhance the prospects of securing the debt financing. In this way, the insurance helps to further safeguard or ring-fence the IP as a source of income.

Also, the availability of IP insurance can greatly catalyze innovation/research and development efforts, and coverage of existing or prospective IP assets can help ensure owners/investors’ full focus on driving the relevant entity’s business strategy - for long term growth, profitability and market leadership. There are no fears of distractions because if the ‘bet-the company’ IP assets are misappropriated or infringed by third parties, the company will be indemnified by its insurers. Insurance will also be a critical factor where IP assets are being pledged as security, or are the

4 Bethan Moorcraft, ‘Intellectual Property Insurance – An Introductory Guide’, *Insurance Business Asia*, 10.09.2019: <https://www.insurancebusinessmag.com/asia/guides/intellectual-property-insurance--an-introductory-guide-177405.aspx#:~:text=IP%20insurance%20covers%20companies%20for,popular%20type%20of%20IP%20insurance> (last accessed 12.04.2021).

5 Kevin J. Hickey, ‘Intellectual Property Law: A Brief Introduction’, Congressional Research Service, 19.09.2018, <https://fas.org/sgp/crs/misc/IF10986.pdf> (last accessed 13.04.2021).

6 ‘Underwriting the Risks of Innovation’, *WIPO Magazine*, August 2011: https://www.wipo.int/wipo_magazine/en/2011/04/article_0007.html (last accessed 13.04.2021).

7 V. Bazylevych and V. Virchenko, ‘Nature of Intellectual Property Insurance and Its Role in Modern Economy’, *Bulletin of Taras Shevchenko National University of Kyiv. Economics*, 2015 Vol. 1 No. 166, p.9

major security being provided by a company seeking finance.

Forms of IP Insurance

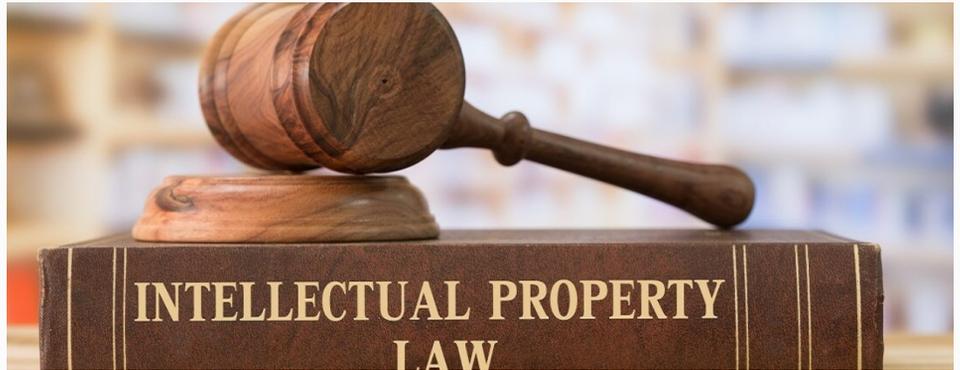
There are different forms of IP insurance that an individual or business can look into as means of risk management. These include:

Commercial General Liability (CGL)⁸ Insurance

This form of insurance is a general policy that seeks to cover many things, IP inclusive. Most CGL Insurance often contains coverage for “advertising injury”, which to an extent, protects actual or alleged infringement or violation of the IP rights. The challenge of this form of insurance lies in its restriction to the different types of IP (most CGL policy does not cover trade secrets, patents, designs etc.) and the defensive form of IP insurance.

To receive coverage under the advertising injury provisions of the CGL, the insured must show: (1) that the injury complained of was committed in the course of the insured’s advertising activities during the policy period; and (2) that the offence is one of those enumerated, and not excluded, in the policy.⁹

Ordinarily, copyright, trademark, service mark, and trade dress infringement claims are often covered under a CGL policy’s “advertising injury” coverage (unless excluded).¹⁰ On the other hand, it may be more difficult to obtain coverage for unfair competition claims under the CGL



policy’s “advertising injury” coverages unless these claims contain an allegation of “misappropriation of advertising ideas or style of doing business” or the “use of another’s advertising idea.”¹¹

Offensive Insurance/ Enforcement Coverage

The offensive insurance/enforcement coverage is another form of insurance with the view to ameliorating misappropriation by resolving the high cost of enforcing IP rights.¹² This form of insurance applies where there has been misappropriation or an attempt to misappropriate the IP rights. Depending on the policy, the insured may either bear the cost of the action and thereafter make a claim or where the cause of action arises, notifies the insurer who in return will secure the service of a professional to enforce the rights. Some of the relevant things to consider in either of this option are the choice of counsel, the cost of

the service of the legal practitioner, the use of an expert to prove misappropriation, length of time in enforcing and other sundry cost arising from enforcement.

Defensive Insurance/ Liability Coverage

This form of insurance is used to provide a defence to a policyholder when he is being sued. Otherwise known as “defence cost and damages reimbursement” insurance, it enables policyholders to assert claims of invalidity against a complainant, fund research to re-examine the validity of the policyholder’s IP rights and may pay for any damages awarded against a policyholder.¹³ The impact of this form of insurance is to prevent a deep cut into finance or expected earnings of the company where the court finds it liable for infringing another’s IP right.

⁸ Melvin Simensky and Eric C. Osterberg, ‘The Insurance and Management of Intellectual Property Risk’, *Cardoso Arts & Entertainment*, Vol. 17, No. 32, p. 332.

⁹ *Ibid.*

¹⁰ In *Houbigant, Inc. v. Federal Ins. Co.*, 374 F.3d 192 (3d Cir. 2004), the Third Circuit of the United States Court of Appeal, found that the insureds’ infringement of Houbigant’s trademarks is an advertising injury.

¹¹ Daniel Belzil and Omid Safa, ‘An Overview of Intellectual Property Issues’, *JDSupra*, 15.03.2019: <https://www.jdsupra.com/legalnews/an-overview-of-intellectual-property-82800/> (last accessed 13.04.2021).

¹² The American Intellectual Property Lawyer’s Association in a survey revealed that the cost of trial is about \$700,000 where less than \$1 million is at risk while \$4 million where the risk is higher than \$1 million. See Russ Krajec, ‘Current Patent Litigation Costs are between \$2.3 to \$4M - from the BlueIron blog’, AP, 10.07.2020: <https://apnews.com/press-release/news-direct-corporation/a5dd5a7d415e7bae6878c87656e90112> (accessed 15.04.2021).

¹³ WIPO, ‘Underwriting the Risks of Innovation’, *WIPO Magazine*, August 2011: https://www.wipo.int/wipo_magazine/en/2011/04/article_0007.html (accessed 13.04.2021).

Directors and Officials Coverage

Another form of insurance coverage is the directors and officials' coverage. Ordinarily, the cause of actions for enforcement or infringement may involve the organisations and officials being jointly sued. While the company may have a form of insurance for defence and offensive claims, the organisation's officials may not have the policy extended to them.

Therefore, the need to have an officials' coverage policy wherein the officials (most of those at the helm of affairs or directly involved in handling the IP) to be insured. This form of insurance may most likely operate as defensive insurance/liability coverage should there be an award of damages against the company and the officials.

Insuring IP: Cogent Considerations

Evaluation

One of the challenges of insuring an IP is valuation. Valuation of an asset is very fundamental to its insurance because it is the lifeline that guides the insurance company to charge the premium and classify the risk and insurance accordingly. Evaluating an IP comes with a lot of questions. Unlike real properties whose value can be decided considering the location, quality of the build, the depreciation of the property and the value of other

properties around it, determining the value of an IP cannot be subject to a fixed rule. What applies to a trade secret may be different from what applies to a patent and so does it apply to every types/class of an IP. Even where there is the same form of patents, the matrixes are not.

Some of the key considerations in valuing an IP are whether the IP is registered and in which countries, the competition threshold (alternatives), how much income the IP has generated within the past few years, the size and growth expectations of the markets for the inventions, etc.¹⁴ In addition, the impact of the disclosure, the exposure of the IP to third parties and the amount of research invested in developing the IP might be relevant factors in evaluating an IP.

Depreciation

The value of an IP may dwindle as the years go by. For example, a trademark that is associated with a product that has now become obsolete due to technological advancement, or an insured trade secret that is no longer profitable, may affect the valuation and the security the insurance seeks to offer the insured. Aside from this, the value of a company's IP may depreciate drastically provided there is a disclosure that hampers or affects customer loyalty and patronage to such a firm. While IP does not lose relevance owing to long use, it can equally fade away and lose relevance as a result of scientific and technical progress.¹⁵

Number of Employees/ Professionals

The exposure of an IP, most especially industrial-focused IP, will most likely depend on the number of individuals who are involved in its management. Therefore, where an IP is to be insured, one of the valid considerations is to determine the number of employees or professionals who had, do come and will come in contact with the IP. Since some of these IP are like stock in trade being used daily to ensure business continuity, determining the number of staff may increase the difficulty of IP insurance.

Multiple Claims

Another challenge to IP insurance is the multiple claims brought by claimants to court. It is not unusual for claimants to have multiple claims in a suit based on misappropriation of trademark, copyright or patents without other claims like account for profit, theft and unauthorised access to the company's database. In such a suit, the question is how the insurer will apply the premiums in defence of the claim.

Will the insurer bear liability for the defence of the risk insured and leave out the uncovered claims undefended, or where there is an award of damages, how will the damages imposed by the courts be applied provided the company is found liable for such an infringement? Where the policy does not determine how

¹⁴ Frank Okeke, 'Horizons: Utilising IP as Security for Financing Transactions in Nigeria', *BD Legal Business (BusinessDay)*, 22.02.2018, p.20; LeLaw Thought Leadership, [p.2:https://lelawlegal.com/add111pdfs/New_Horizons_Frank.pdf](https://lelawlegal.com/add111pdfs/New_Horizons_Frank.pdf) (accessed 13.04.2021).

¹⁵ V. Bazylevych and V. Virchenko, (*supra*, see footnote 6).

the claim will be defended, it is believed that the US case of **Seaboard Society v. Gillette Co.**¹⁶ - where it was held that where an insurance policy potentially covers one claim in a multi-claim lawsuit, the insurer is bound to defend all the claims - will apply.

Joint Ownership

Developing an IP sometimes may involve more than an individual or group of individuals of which one part may be unwilling to insure the IP. Where there is an alleged or actual misappropriation, the challenge of who will bear the responsibility to either defend or enforce the rights will arise and where damages are awarded either against or in favour, the challenge of allocating the portion to each of the parties may become an issue.

Resolving the Challenges

Periodical valuation of the IP and the premium payable

Because IP is volatile and its value not fixed; insurers, to safeguard paying the maximum amount for a claim for an IP which value has reduced or is no longer valuable where misappropriated, must at regular intervals access the IP and its prevailing relevance in the industry. In determining this, the services of relevant brokers and experts must be secured to review the IP to determine either the upward or downward review of the premiums.

¹⁶ 476 N.E.2d 272 (N.Y. 1984).
¹⁷ Gov.UK, 'Intellectual Property Insurance', 22.01.2016: <https://www.gov.uk/guidance/intellectual-property-insurance> (accessed 17.04.2021).
¹⁸ 'IP Insurance', 20.07.2018: <https://www.ipaustralia.gov.au/ip-infringement/more-about-ip-infringement/ip-insurance> (accessed 19.04.2021).

Settling up a Vehicle

Considering the challenges that may be arising from joint ownership of an interest in an IP, parties should be made to either jointly agree before insuring or divest their interest to a vehicle set up to access the benefit of insurance.

IP Insurance: Lessons from the Global Market



United Kingdom

The government of the United Kingdom (UK) recognises and approves the practice of IP insurance. Some of the products include: (a) *opinion only* which covers legal costs of obtaining an opinion on the likelihood of successfully enforcing or defending an IP claim; (b) *enforcement and defence* which covers legal costs of taking action to stop others infringing IP rights, defending allegations of infringement, and enforcement and defence either separately or together; (c) *damages* which cover any damages payable if an infringement action is lost; (d) *validity* which covers legal costs of defending challenges to the validity of IP rights; (e) *lost revenue* which covers revenue lost as a result of

loss of IP rights; (f) *indemnity* which covers liabilities arising under guarantees given to third parties; and (g) *cyber insurance* which covers losses from a variety of cyber incidents, including IP right breaches.¹⁷

Australia

Similarly, the Australian government approves the

practice of IP insurance. An IP insurance will provide for either or both – the legal costs for enforcing claims against infringers which may include damages such as loss of profits or reputation and settlements; and the cost for defending infringement claims made against an insured which may include claims against the insured's customers or licensees.¹⁸

Japan

In Japan, the Japan Patent Office in partnership with her Japan Chamber of Commerce and Industry, the Central Federation of Small Business Associations, Sampo Japan Nipponkoa Insurance Inc., Tokio Marine & Nichido Fire Insurance Co. Ltd.,

and Mitsui Sumitomo Insurance Co. Ltd had in 2016 established Japan's first insurance business to cover the cost of IP litigation in other countries.¹⁹

Case Studies

Recent developments from developed economies have shown that quite a lot could be expended in prosecuting, defending or settling IP related claims. Examples include: (a) Apple settled to pay Proview US\$60 million on infringement of the trademark 'iPad';²⁰ (b) Nestle's loss of KitKat's trademark claim at the European Union Court after sixteen (16) years;²¹ (c) Apple's US\$120 million success over Samsung in the slide-to-unlock patent infringement claim;²² and the appellate decision of the Supreme Court of the USA on 5th April 2021 in **Google LLC v. Oracle America Inc.**²³ on the issue of whether Sun Java API's declaring code was copyrightable and where the use of the code by Google was held to amount to "fair use".

The question is: should businesses in Nigeria not be bracing up to protect their valuable IP rights through all legal means? And is



there sufficient appreciation of the financial reputational exposure that could result from misappropriation/infringement of third parties' IP rights, thereby producing a deterrent effect? If the sectoral and wider ecosystem that a company operates in (especially vendors, clients, JV/alliance partners, etc) frowns at improper utilisation of third-party IP rights, will this help to spawn the development of IP insurance products – whether of funding enforcement claims or paying settlements in cases of breaches? Ultimately, when activity in IP enforcement picks up in Nigeria, it would be a question of whether exposure can

sometimes not be enough to fold up the business?

Harnessing Opportunity: 'Creating' the Market for Insurance of IP Assets in Nigeria

According to the Organisation for Economic Co-operation and Development (OECD), the strength of a country's patent rights is associated with a more than 2% increase in Foreign Direct Investment (FDI) which could be for the establishment of plants for sales and distribution or manufacturing, rather than research.²⁴ The 2019 *Global Competitiveness Report* ranked Nigeria as the 116th country generally, whilst ranking 132nd out

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¹⁹ 'Lowering the Risk Associated with Overseas Intellectual Property Disputes', Ministry of Economy, Trade and Industry, June 2016: https://www.meti.go.jp/english/press/2016/0608_03.html (accessed 19.04.2021).

²⁰ Mellisa Tolentino, 'Apple Settles Proview Dispute, Pays \$60m', Silicon Angle, 02.07.2012: (accessed 19.04.2021).

²¹ David Meyer, 'The EU's Highest Court Has Ruled in Nestle's 16-Year Battle to Trademark Kit Kat's 3D Shape', Fortune: <https://fortune.com/2018/07/25/nestle-kit-kat-3d-trademark-eu> (accessed 19.04.2021). See *Société des Produits Nestlé SA and Others v. Mondelez UK Holdings & Services Ltd, Joined Cases C-84/17 P, C-85/17 P and C-95/17 P, Judgment of the Court (Third Chamber) of 25.07.2018.*

²² Jacob Kastrenakes 'Apple Has Finally Won \$120 Million from Samsung in Slide-To-Lock Patent Battle', The Verge, 06.11.2017: <https://www.theverge.com/2017/11/6/16614038/apple-samsung-slide-to-unlock-supreme-court-120-million> (accessed 22.04.2021).

²³ 593 US (2021): https://www.supremecourt.gov/opinions/20pdf/18-956_d18f.pdf (accessed 25.04.2021). Note: The opinion of the Court is still subject to formal revision before publication in the preliminary print in the United States Reports, hence no page has been formally provided as at time of writing.

²⁴ W.G. Park and D.C. Lippoldt, 'Technology Transfer and the Economic Implications of the Strengthening of Intellectual Property Rights in Developing Countries', OECD Trade Policy Working Papers, No. 62, p. 20: <https://www.american.edu/cas/faculty/wgpark/upload/Tech-Transfer-w-Doug-Lippoldt.pdf> (accessed 19.04.2021).



of 141 countries, on IP protection.²⁵ The practice of IP insurance could have no doubt made a difference, as a subset of respect for and sanctity of contracts/rule of law *cum* functioning, independent judiciary.

The need for IP insurance becomes more poignant in Nigeria, given the recent upsurge in innovation and many technology start-ups working to achieve minimum viable product (MVP), attracting funding/going through seed rounds and scaling their products or businesses to wider clientele and geographies. Businesses investing considerable human and financial capital in developing cutting edge, disruptive IP assets meant to deliver significant commercial value down the road, need IP insurance but it appears that the market has not even begun to show any major sign of development in Nigeria.

This could be because insurance is a game of numbers, and the industry has not seen the need for products on such a scale as to develop the same to profitably underwrite such risks. However, this is likely to be changing especially as newer, IP assets rich and dependent businesses (including those whose IP assets drive their valuations), spring up - a trend that we have begun to see, and which is likely to continue with

greater intensity. One's positive projection is that there could be an underwriting business to be done in this area once the size of the opportunity is considered big enough. Of particular interest is the Nigerian Fintech space, where the future can only promise more intensive competition.

Whilst not minimising the amount of work involved in making IP assets insurance a reality in Nigeria, it is worth noting that cyber risk insurance had similar humble beginnings. Whilst the cyber risk insurance market or demand was initially small, but the criticality of the cover to significant clients (for example, deep pocketed financial services industry players), that needed them, was enough motivation for cyber insurance products to emerge. Hopefully, a few years down the road, we will say the same for IP assets insurance in Nigeria.²⁶

Furthermore, with African trading borders likely to be less real *vide* the **African Free Continental Free Trade Agreement (AfCFTA)**, the prospect of an upsurge in potential IP infringement activity is high – the reality is that risk factors will likely keep getting higher. For example, a competitor

²⁵ World Economic Forum (WEF), 'The Global Competitiveness Report 2019' : http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf (accessed 19.04.2021). Note: The 2020 Report does not rank the countries, being an abridged version relative to the 2019 Report. See WEF, 'The Global Competitiveness Report Special Edition 2020: How Countries are Performing on the Road to Recovery': http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2020.pdf (accessed 26.04.2021).

²⁶ It is conceded that the development process is not cheap. The ultimate products (at least at the initial stages), may likely be expensive because of actuarial numbers resulting from small pool of prospective insured, etc. Actuarial human capital gaps in the Nigerian insurance market is still a notorious handicap, with cost implications for actuarial services. There would also be need to engage marketing company to do research, etc. We understand that there had been some isolated efforts to consider this opportunity previously; whilst the rating was not too dismal, but it was not up to the critical mass that could make it a venture worthy of further business development investment at that time. Ultimately, the economic rule still applies, that "supply follows demand".

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with a deep pocket who feels that a new entrant in the market may destabilise its market leadership may institute an action claiming infringement of IP rights and secure an injunction pending determination of the suit. The lack of IP insurance may lead to conceding to unfavourable terms of settlement or where the matter goes to full trial, loss of time and resources in defence of the claim.

This writer submits that the foregoing macro realities present a ready invitation to the insurance

industry to develop products, and the sector regulator, the National Insurance Commission (NAICOM), to facilitate same²⁷ – because in the vanguard to deepen insurance penetration, no area of potential contribution should be overlooked.²⁸ Such products whilst being in a class of their own, are in reality cousins of the business continuity (BC) coverage that many businesses take because they are widely available in the market.²⁹

As part of failure proofing major projects, competitive bids should require bidders to positively show evidence of the insurance of the IP that they intend to use to execute contracts, especially large scale government contracts. This should be particularly enforced for companies in the information and communications technology (ICT) space or those involved in capital-intensive and research-driven projects. Ultimately, these initiatives will help drive Nigeria's insurance penetration which is currently at an abysmal 0.4%.³⁰ It will also not only grow the insurance industry but serve as a way of ensuring market relevance and BC through enforcement of their IP rights or defence of alleged infringement.

Conclusion

As it has been stated above and gleaned from experience in other jurisdictions, the pros of insuring an IP in a business entity trumps the cons. The use of IP insurance can both be a sword and a shield, and it becomes important not only because misappropriation threatens one's ability to preserve, but also to enhance those values.³¹ Insurance companies, regulators and all types of businesses in Nigeria must therefore have a rethink of their insurance plans and incorporate IP insurance into the list of existing insurance policies.

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²⁷ Pursuant to NAICOM's statutory and professed mandates; for example *Para 6, NAICOM's 'Mission Statement, Values, Vision and Goals'* is on: "optimal development of the Nigerian insurance market": <https://naicom.gov.ng/index.php/about-us/overview> (accessed 27.04.2021). See also, *Guideline 1.5.0(a) Market Conduct and Business Practice Guidelines for Insurance Institutions in Nigeria (PG)* issued by NAICOM provides that "all new products must be approved by the Commission in line with the requirement of the Insurance Act 2003." In applying for the new products by insurance companies, *section 1.5.0(b)* provides that such application shall be accompanied amongst others, by "... (vi) letter of consent from the reinsurer; (vi) (sic) *Marketing Brochure*; (vii) *risk analysis of the product*; (viii) *5-year business plan*; (ix) *and any additional document*." The PG is available at: <https://www.naicom.gov.ng/docs/regulations/Market%20Conduct%20Guidelines.pdf> (accessed 27.04.2021).

²⁸ The principal object of NAICOM vide *section 6 NAICOM Act, Cap. N53 LFN 2004 (NAICOM Act)* is to "ensure the effective administration, supervision, regulation and control of insurance business in Nigeria." NAICOM vide *section 7(a) and (g) NAICOM Act* has the function to "establish standards for the conduct of insurance business in Nigeria" and "approve standards, conditions and warranties applicable to all classes of insurance business."

²⁹ The Nigerian Insurers Association (NIA) and the Nigerian Council of Registered Insurance Brokers (NCRIB) can also start monitoring the macro environment and be ready to chaperone industry efforts to convert the opportunity. Also, foreign underwriters with Nigerian presence may be able to leverage their international experience to drive their development of Nigerian specific products in this regard. Enquiries with some insurance practitioners in the course of writing this article shows that the market has not taken any conscious note of the potential opportunities in IP assets insurance; again this is understandable because the opportunity is probably currently below materiality thresholds for insurers to begin to invest business development energy thereon.

³⁰ Modestus Anaesoronye, 'At 60, Nigerian Insurance Industry Still Grappling with Low Penetration', *Business Day*, 02.10.2020: <https://businessday.ng/insurance/article-at-60-nigerian-insurance-industry-still-grappling-with-low-penetration/> (accessed 20.04.2021). As at time of preparing the *NAICOM's 2016-2020 Corporate Strategic Plan*, insurance penetration was at 0.6%. See NAICOM, 'NAICOM Corporate Strategic Plan 2016-2020', p. 16: https://naicom.gov.ng/docs/publications/NAICOM'S%20STRATEGIC%20PLAN%202016%20-%202020%20MAY%202019_%20-%20Rvsd%20_1_.pdf (accessed 25.04.2021).

³¹ Melvin Simensky and Eric C. Osterberg, (*supra*, footnote 8 above), p. 343.