



23rd July, 2020

To:
WIPO,
Geneva

Dear WIPO,

**Re: WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI)
Response from a Global South Perspective**

Centre for Intellectual Property and Information Technology (CIPIT) is pleased to further contribute to the ongoing conversation and call by WIPO on IP and AI. CIPIT would like to reiterate response it provided on 14th February 2020 on the same subject. Below is additional contribution by CIPIT to this important conversation which is enriched by the conversations that took place on 7th and 9th July 2020 and further research from our team.

CIPIT is cognizant of the fact that the AI conversation is a multi-stakeholder effort and WIPO is leading the discussion from the IP front. CIPIT shall therefore endeavor to restrict its issues to the IP Policy issues in this commentary.

CIPIT would like to suggest the following additional list of priority items/issues for consideration when developing a regulatory framework or policy around IP and AI. This has a focus on Global South Countries specifically Kenya. The issues raised below are dependent on each other.

1. **Reframing the questions** to accommodate/support evidence collection and collation from member countries to support the process of in a more contextual and responsive way. Member States are at differentiated stages in their response and adoption of AI and AI inventions. This means that the States have varies experiences from their interaction with AI so far and although the same can be aggregated to find similarities, the experiences are not similar.
2. **Open Access to Inventions and Data:** Evidence based Research¹ in Africa through case studies and CIPIT's observations have shown that innovation practices in Africa in particular Kenya, lean more towards openness of the innovation processes. There is robust preference of little or no imposition of restrictions and 'benefits' imposed by intellectual property ownership. CIPIT has also observed that intellectual property (IP) does not necessarily incentivize innovation and innovators who have proper understanding of IP systems, at times prefer not to utilize them. Other factors such adaptability of the technology in the market, the availability and accessibility of

¹ De Beer, J, Armstrong, C, Oguamanam, C, & Schonwetter, T (Eds); *Innovation & Intellectual Property: Collaborative Dynamics in Africa*, University of Capetown Press (2014). Available [here](#).



resources to scale and market readiness are key in the innovation ecosystem in Kenya². With this background, CIPIT recommends formulation of a regulation framework that allows open access of the data driven inventions.

3. **Protection of Data:** In the WIPO call on 8th July 2020, concerns were raised on the probability of protecting data used to develop AI inventions. It is important to consider whether this will promote access or increase the protectionist approach to data. In addition, the question of whether data being information or mere facts should be protected by copyright or any other legal protection. What this would mean to access to information as a public right as compared to the accrued to the private persons.
4. **Ethics and Principles of Sharing Data:**
 - a. Since most of the inventions are data driven, the how, where and who collects the data is an issue which should be sufficiently addressed before having an IP framework. Consideration should be extended to include and broaden any standard of IP protection for AI and AI inventions to include principles of sustainability and inclusivity of the data. The data sharing to allow for recycling/re-use without such being considered as infringement. The standards should have room to allow for room for flexible uses that have both societal and ecological goals as a pre-condition to protection. Any proposed framework should include a format that allow examining the impact of the AI on the quality of life of the people from whom the data is collected.
 - b. Depending on the nature of the invention at hand, can the data subjects claim contribution in the invention for IP purposes? If an invention is purely data driven, should the data subjects be considered as co-owners noting their substantial and critical contribution to the development of the invention? In addition, what principles should regulate the data access especially by the public?

Where data is collected from public services such as personal identification numbers, private ownership of AI and AI inventions developed should be restricted and declared before registration. The IP framework should not be used to limit public access to such inventions. Proposal would be to allow governments or its institutions to access freely such inventions for the benefit of the public.

5. **Capacity:** CIPIT acknowledges that there countries are not at par in technological advancement. That with free movement of goods and services, it is possible to import and export AI and data driven inventions. As

² Nzomo V. (et al) Modes of Innovation and Enterprise Development by Nairobi's Mobile Tech Startups; OpenAir WP22 (2020). Available [here](#).



stated in our intervention dated 14th February 2020, some countries would not have the capacity to examine and enforce AI applications due to their frameworks and priorities. It therefore paramount that as this conversation continues, the voice of the developing countries is heard and considered. This is especially important as in the past many developing countries have adopted international laws and legal instruments as model laws with little or no variations.

CIPIT will continue to engage on the topic, participate in and inform the various interventions organized by WIPO, its Member States and Partners on this important conversation.