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CENTRE FOR CIVIC ENGAGEMENT

# LEGAL CLINIC NOTES - GUIDE ON INTELLECTUAL PROPERTY LAW RIGHTS IN RELATION TO NGOS

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## Intellectual Property

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. IP is protected in law by, for example, patents, copyrights and trademarks, which enable people to earn recognition or financial benefit from what they invent or create.

The following IP protection is available in Zimbabwe:

### 1. Trademarks

Trademarks means a mark which is used or proposed to be used about goods or services to indicate a connection in the course of trade between the goods or services and some person having the right, either as proprietor or as registered user, to use the mark, whether with or without any indication of the identity of that person; and distinguishing the goods or services with which the mark is used or proposed to be used, from the same kind of goods or services connected in the course of trade with any other person. This is governed by the **Trade Marks Act [Chapter 26:04]**.

Section 21 of the Act governs the application for trademarks. Registering is through the Zimbabwe Intellectual Property Office (ZIPO) at Century House East 38 Nelson Mandela Avenue Harare. It involves:

- conducting a trademark search to ensure availability
- obtaining and completing the application form with accurate details and specifying goods/services covered
- submitting the form with the required fees and documents, and
- undergoing examination to verify legal compliance and avoid conflicts with existing trademarks.

Accepted trademarks are published in the **Zimbabwe Intellectual Property Journal** for public review, followed by an opposition period where third parties can contest the application. Upon successful resolution, ZIPO issues a registration certificate valid initially for 10 years, renewable indefinitely every 10 years.

## 2. Patents

This is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how - or whether - the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document. This is governed by the **Patents Act [Chapter 26:03]**.

Registering a patent through the Zimbabwe Intellectual Property Office (ZIPO) involves several steps: first, ensuring your invention is novel and industrially applicable, followed by obtaining and completing the patent application form with detailed descriptions and necessary drawings. After submitting the application along with fees, ZIPO examines it for patentability, potentially publishing it in the Zimbabwe Intellectual Property Journal. During a designated opposition period, third parties can contest the application. If successful, ZIPO grants the patent, requiring annual maintenance fees to sustain its validity.

## 3. Industrial designs

This constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or colour. This is governed by the **Industrial Designs Act [Chapter 26:02]**.

Industrial designs are registered through the Zimbabwe Intellectual Property Office (ZIPO) which guides through ensuring novelty, completing forms, submitting fees, undergoing examination, facing potential opposition, and ultimately securing registration with maintenance fees to upkeep its validity.

#### 4. **Plant Breeder's Rights**

This provides for the registration of plant breeders' rights in respect of certain varieties of plants and the protection of the rights of persons who are registered as the holders of such rights. This is governed by the **Plant Breeders Rights Act [Chapter 18:16]**.

The Act prescribes the registration process which is managed by the Plant Breeders' Rights Office under the Ministry of Agriculture. One has to ensure that their plant variety is new, distinct, uniform, and stable. Obtain and accurately complete the application form, including detailed information and supporting documents such as a technical description and proof of ownership. Submit the form with the required fees for examination. If your application meets the criteria, it will be published in the Plant Breeders' Rights Gazette for public scrutiny, followed by an opposition period. If no oppositions are upheld, one will be granted plant breeder rights, provided they comply with any maintenance requirements.

#### 5. **Geographical indications**

These are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods. This is governed by the **Geographical Indications Act [Chapter 26:06]**.

The Act provides for the application and registration process involves a structured process managed by the African Regional Intellectual Property Organization (ARIPO) and the Ministry of Justice, Legal and Parliamentary Affairs. One should ensure that their product has specific qualities tied to its geographical origin. Obtain and complete the application form accurately, including detailed information and supporting documents. Submit the form with the required fees for examination. If the application meets the criteria, it will be published in the official gazette for public scrutiny, followed by an opposition period. If no oppositions are made or upheld, one will be granted Geographical Indication status, provided they comply with maintenance requirements.

## 6. **Layout designs of integrated circuits**

This provides for the registration of layout designs of integrated circuits and for the protection of registered layout designs. This is governed by the **Integrated Circuit Layout-Designs Act [Chapter 26:07]**.

The application and registration process is managed by the African Regional Intellectual Property Organization (ARIPO) and the Zimbabwe Intellectual Property Office (ZIPO). One should ensure that their design is original and not commercially exploited for over two years. Obtain and accurately complete the application form, including detailed information and supporting documents. Submit the form with the required fees for examination. If the application meets the criteria, it will be published in the official gazette for public scrutiny, followed by an opposition period. If no oppositions are upheld, one will be granted registration, provided they comply with maintenance requirements.

## 7. **Copyright and neighbouring rights**

This is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings. This is governed by the **Copyright and Neighbouring Rights Act [Chapter 26:05]**.

The Act prescribes how an application for a copyright can be effected through the Zimbabwe Intellectual Property Office (ZIPO). One must begin by ensuring their work is in a fixed form, such as written or recorded. Obtain and complete the copyright registration application form, available on ZIPO's website or directly from their office. Include personal details, work specifics, and author information. Deposit copies of your work, like manuscripts or recordings, as required. Pay the applicable registration fee and submit the completed form with proof of payment to ZIPO. Your application will undergo processing, including verification and examination of your work. Upon approval, ZIPO will issue a copyright registration certificate, valid typically for the author's lifetime plus 50 years, or 50 years from publication for anonymous works.

**It is also possible to register the above through the African Regional Intellectual Property Organization (ARIPO)**  
**<https://www.aripo.org>**

How can a non-profit organisation navigate a situation where a funder requests rights over the work done or that the work done and product be made open to public access?

Navigating the complexities of funding agreements that require public access or grant rights over the work produced can be challenging for NGOs. To protect their work while accommodating the funder's requirements, NGOs can employ several strategies.

- They should engage in open discussions with the funder to negotiate more favourable terms, balancing the funder's need for public access with the NGOs' need to protect its work. Clearly defining the scope and duration of what will be made public or what rights are being granted can help retain some long-term control.
- Negotiating agreements and contracts with terms that protect the NGO's interests is paramount. Including specific clauses in the agreement that outline the use, distribution, and modification of the work can help safeguard sensitive information or methodologies. The NGO can go as far as including terms and conditions at the beginning or end of proposals submitted to ensure a level of protection for their work.
- Alternative approaches can also be beneficial. Proposing a phased approach to public access, where only certain parts of the work are initially available and more sensitive elements are released later, if at all, can be a viable strategy.
- A co-branding approach, where both the NGO and the funder are credited, can maintain the NGO's visibility and reputation. Separating the project into distinct parts, where only the outcomes funded by the donor are subject to public access, and other parts remain under the NGO's control, is another effective tactic.

## **What can an NGO do when the grant/donor agreement restricts its rights to intellectual property?**

When a grant or donor agreement restricts an NGO's rights to intellectual property, the NGO can take several steps to navigate this challenge while still protecting its interests:

### **Negotiate the Terms:**

- Before signing the agreement, the NGO should attempt to negotiate more favourable terms. This could involve requesting joint ownership of the intellectual property (IP) or seeking permission to use the IP for certain purposes, such as internal use or further development.

### **Clarify Usage Rights:**

- Ensure that the agreement clearly defines how the NGO can use the IP. Even if the donor retains ownership, the NGO might negotiate for rights to use the IP in specific ways that align with its mission and future projects.
- Work to limit the scope of the restrictions to specific projects or periods. This can prevent the donor from having perpetual control over all IP generated by the NGO.

### **Seek Alternative Funding:**

- If the restrictions are too onerous, the NGO might consider seeking alternative sources of funding that do not impose such restrictive conditions on IP.

### **Document Development:**

- Keep thorough records of the development process of any IP. This documentation can support claims of prior or independent development, which might be useful in negotiations or legal considerations.

## **Collaborative Agreements:**

- Propose collaborative agreements where the donor's contribution is acknowledged but does not overshadow the NGO's right to use or further develop the IP. This can include co-branding or shared credit in publications and outputs.

## **Public Domain:**

- Where possible, consider placing the IP in the public domain or using open-source licenses. This approach can prevent any single entity from claiming exclusive rights and aligns with many NGOs' missions of promoting access and public good.

By employing these strategies, NGOs can better manage donor-imposed restrictions on intellectual property while maintaining their operational and strategic goals.

## **How can an NGO protect its ideas and work?**

Ideas and projects in proposals would ideally fit into literary works which are covered under Copyright. However, section 10(5)(b) of the **Copyright and Neighbouring Rights Act [Chapter 26:05]** states that "*ideas, procedures, systems, methods of operation, concepts, principles, discoveries, facts or figures, even if they are explained, illustrated or embodied in a work*" are not eligible for copyright. Under the Copyright Act, there is no way to protect an NGO's ideas as intellectual property however below we shall discuss various protection measures that could be implemented to the benefit of the NGO. The following strategies are proposed:

### **1. Strategic Information Sharing**

Share only necessary information with donors and other stakeholders. Keep proprietary methods, detailed data, and innovative ideas confidential until trust and mutual understanding are firmly established.

### **2. Public Awareness and Branding**

Increase public awareness of the NGO's work through branding and public relations efforts. A strong public presence can help deter misuse of the NGO's ideas, as it is easier to attribute the original source.

### 3. Plagiarism protection

Underlying ideas, strategies, and concepts are not protected under copyright law. As such, third parties are permitted to utilise these elements provided they do not engage in verbatim copying of the specific expression or detailed content of the work. This means that while the unique manner in which ideas are articulated can be copyrighted, the general concepts themselves remain available for use by others, so long as they are not duplicated in exact wording or form.

### 4. Restraint of Trade

A restraint of trade is an obligation voluntarily undertaken by the employee to refrain from the exercise of freedom of trade in favour of the employer in the exercise of freedom of contract. As per **Greendale Hardware & Electrical v Goodfellow Bangaba SC15/07 Malaba JA at p8-9**, “A restraint of trade does no more than protect the employer against mere competition from a former employee by preventing him or her from carrying on business similar to that undertaken by him or entering the services of an undertaking carrying on business similar to that undertaken by him in fear that in doing so the employee would exercise the knowledge and skill acquired during employment with him is an unreasonable restraint.” As per the case, the accepted principle that an employer is not entitled to protection from mere competition by a former employee means that the employee is entitled to fully utilise any personal skill or experience, even if it was acquired during their employment. This freedom to fully use one's improving ability and talent is fundamental to the policy of the law regarding this type of restraint. The additional knowledge and skills acquired during employment belong to the employee, and their exercise cannot be lawfully restrained by the employer, as they are not the employer's property. NGOs can therefore rely on the restraint of trade however their application is limited as the restraint is time-bound. Furthermore, the restraint does not apply when the idea is further developed with the skill and knowledge that the employee would have acquired during their employment.

## 5. **Non-Disclosure Agreements (NDAs)**

Require donors and other stakeholders to sign NDAs before sharing sensitive information. This legally binds stakeholders to confidentiality, preventing them from disclosing or misusing the information. However, the use of NDAs could potentially disadvantage the NGO. By imposing preconditions in the form of NDAs, NGOs may inadvertently create barriers that deter potential funders. Funders might be reluctant to engage with NGOs that require NDAs, as these agreements could be perceived as cumbersome or unnecessary, particularly when the funders are in a position to provide much-needed financial support. The insistence on NDAs might be seen as a lack of trust or an overly cautious approach, which could turn off funders and limit the NGO's ability to secure the necessary funding for their projects. It is essential for NGOs to carefully weigh the need for confidentiality against the possible negative impact on donor relationships and funding opportunities.

## 6. **Licensing Agreement**

Licensing agreements are legal contracts that allow the use of intellectual property (IP) under specific conditions while the IP owner retains ownership. There are various types, including exclusive, non-exclusive, and sole licences. Key components of these agreements include scope of use, duration, territory, financial terms, quality control, confidentiality, and termination clauses. Benefits include monetizing IP, market expansion, risk mitigation, fostering innovation, and legal protection. To protect IP, agreements should have clear terms, regular audits, legal recourse provisions, and periodic reviews. Examples include technology, trademark, and patent licensing. Overall, licensing agreements help IP owners control, commercialise, and protect their assets. NGOs can use these licensing agreements to protect use of their work from donors and fellow organisations.

## Local and International NGOs Who Have Protected Their Work



### Pathfinder International

Pathfinder International is an NGO focused on reproductive health and rights. They protect their intellectual property through a combination of copyright, trademarks, and licensing agreements. Pathfinder International develops innovative health interventions and tools. They protect these innovations through copyright for materials like training manuals and curricula. They may also trademark certain program names or logos. Additionally, they use licensing agreements to control how their intellectual property is used and ensure that it is not misused or appropriated without permission.



### Doctors Without Borders

Doctors Without Borders protects its intellectual property through a combination of copyright, trademarks, and stringent control over the use of its brand and medical protocols. They develop medical protocols and guidelines that are critical to their humanitarian work. They protect these protocols through copyright and closely guard their use to ensure that they are implemented correctly and not modified without authorization.



### International Rescue Committee (IRC)

The IRC, which provides humanitarian aid and assistance to refugees and displaced persons, protects its intellectual property through legal frameworks and partnerships. The IRC develops proprietary methodologies and tools for delivering aid and conducting assessments in crisis situations. They protect these innovations through legal means such as patents or trade secrets where applicable. They may also enter into partnerships with other organisations under clear agreements that specify the ownership and use of intellectual property developed jointly.



## Higherlife Foundation

Higherlife Foundation is an organisation in Zimbabwe that focuses on education, healthcare, and leadership development. It develops educational programs, curricula, and materials aimed at improving access to quality education. They protect their intellectual property through copyright for their educational materials and may use trademarks to protect their brand identity. They also employ licensing agreements to regulate how their intellectual property is used by partners and stakeholders.



## CARE International in Zimbabwe

CARE International is a global NGO that works on poverty alleviation and humanitarian aid. CARE International in Zimbabwe develops community-based programs and tools aimed at improving livelihoods and resilience. They protect their intellectual property through copyright for program materials, reports, and publications. They may also use trademarks for their organisation's name and logo. CARE International ensures that their intellectual property rights are respected through partnerships and agreements with stakeholders.