
“Opportunities and Challenges in the Pacific Region in Using the IP System for Economic Growth and Business Competitiveness”

VANUATU – Country Report

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Current status of IP Administration & Enforcement in Vanuatu

Existing IP Legislations:

1. Copyright And Related Rights Act [No. 42 of 2000]
2. Circular Layouts Act [No. 51 of 2000]
3. Trade Secrets Act [No. 52 of 2000]
4. Trademarks Act [No.1 of 2003]
5. Patents Act [No.2 of 2003]
6. Designs Act [No. 3 of 2003]
7. Geographical Indications (Wine) Act [No. 53 of 2003]

1. Copyright and Related Rights Act [No.1 of 2000]

- An Act to provide for copyright and related rights.
- The Act defines 'copyright' in a work as comprising the economic and moral rights set out in sections 8 and 9 respectively.
- The application of the Act applies to works, performances, sound recordings, broadcasts and expressions of indigenous culture that:
 - (1) are created on or after the commencement of this Act; or
 - (2) were in existence before that commencement.
- The Act was passed by Parliament on 29 December 2000.

2. Circular Layouts Act [No.51 of 2000]

- The purpose of this Act is to provide for the protection of layouts for integrated circuits.
- The Act reflects international trends towards greater uniformity in the field of intellectual property law. In particular, this Act conforms with the minimum standards and principles prescribed for layout designs of integrated circuits in the international Agreement on Trade-Related Aspects of Intellectual Property Rights.
- The Act was passed by Parliament on 29 December 2000

3. Trade Secrets Act [No.52 of 2000]

- The purpose of this Act is to provide for the protection of trade secrets and other undisclosed information.
- The Act reflects international trends towards greater uniformity in the field of the protection of trade secrets. In particular, the Act conforms with the minimum standards and principles prescribed for the protection of trade secrets in the international Agreement on Trade-related Aspects of Intellectual Property Rights.
- The Act defines what is meant by a trade secret, states that the owner of a trade secret has the right for it to remain undisclosed, and sets out the remedies available to the owner if the trade secret is acquired, used or disclosed without authority.
- The Act was passed by Parliament on 29 December 2000

4. Geographical Indications (Wine) Act [No.53 of 2003]

- An Act to control the use of false or misleading geographical indications for the origin of wine.
- The Act was passed by Parliament on 29 December 2009.

5. Trademarks Act (No.1 of 2003)

- An Act to provide for the registration and protection of trademarks.
- The Act was passed by Parliament on 21 July 2003.
- The Act repealed the *Registration of United Kingdom Trademarks Act* [Cap 81], which formerly applied in Vanuatu.

6. Patents Act [No. 2 of 2003]

- An Act to provide for the registration and protection of Patents.
- The Act was passed by Parliament on 21 July 2003.
- The Act repealed the *Registration of United Kingdom Patents Act* [Cap 80], which formerly applied in Vanuatu.

7. Designs Act [No.3 of 2003]

- An Act to provide for the registration and protection of designs.
- The term 'design' is clearly defined in section 2 of the Act.
- The Act was passed by Parliament on 21 July 2003.
- The Act commenced on 10 November 2003.

Are the laws enforceable?

- While the 7 Acts have been passed by Parliament, apart from the Designs Act, the 6 remaining Acts are yet to be gazetted; and
- For this reason, the statutory provisions of the 6 remaining Acts cannot be enforced by the appropriate authorities.

The IP System in Vanuatu

- In contrast to many countries in the world, Vanuatu is relatively adolescent in terms of Intellectual Property Rights.
- It is yet to become a member of WIPO and to ratify the available IPR Conventions and Treaties.
- There is no specific institution or administrator to manage and enforce the IP system and relevant IP legislations in Vanuatu.
- At present, the Ministry of Trade and Commerce steps in on an ad hoc capacity to manage matters that concern IP in Vanuatu. This year, they have created the post of an intellectual property officer and have employed a female lawyer to that position.
- The Ministry of Trade and Commerce are also currently working on improving institutional capacity building in the Industry Division – human & material resources, office infrastructures, responsible for the administration & enforcement of the IP system
- The government has also on an official capacity requested technical assistance from WIPO towards the establishment of an IPR Unit to be located within the Ministry of Trade and Commerce.

Opportunities

- Vanuatu, like all Pacific countries, is rich in cultural diversity and tradition.
- The different islands that make up the Vanuatu archipelago have their own distinctive cultural performances and agriculture produce. All of which can generate income commercially.
- There are diverse and comparative advantages such as:
 - (a) In cultural performance for e.g. Nagol jump from Pentecost, Toka Dance from Tanna, the Rom Dance from Ambrym or the popular string band from Efate and the Shepherds group of islands; or
 - (b) In agriculture production for e.g. Kava and Tanna Coffee.
- In Vanuatu, it is apparent that there exists the potential to expand in entrepreneurship development in areas, such as:
 - (a) Artistic and performing arts;
 - (b) Traditional and industrial designs in agro-processing;
 - (c) Value-addition in agricultural commodities; and
 - (d) Industrial designs in the import-substitution/manufacturing sector.

The Nagol Jump – The High Flyers



The Nagol or 'Naghol' or land diving is a ritual performed by the men of the southern part of Pentecost Island, Vanuatu. The men jump off of wooden towers around 20 to 30 metres (66 to 98 ft) high, with two tree vines wrapped around the ankles. Land diving is done without any safety equipment. The tradition has developed into a tourist attraction.



The origin of nagol is described in a legend of a woman who was dissatisfied with her husband. It is sometimes claimed that the woman was upset that her husband was too vigorous regarding his sexual wants, so she ran away into the forest. Her husband followed her, so she climbed a banyan tree and tied vines to her ankles and jumped and survived. Her husband jumped after her, but did not tie vines to his ankles, which caused him to plummet to his death. Legend has it that the men now perform the jump so that they will never be tricked again.

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- The Nagol jump is now a tourist attraction for Pentecost and Vanuatu as a whole.
 - The Nagol jump is also considered by many as the precursor to the bungee jump which is now a well wide phenomenon.
 - Question?
Did the bungee jump originate from the Nagol jump?

Kava - The Drink of the Gods

- Kava is a plant that is harvested and prepared in the form of a traditional drink.
- It is grown in almost all the islands of Vanuatu, and, different islands have their own variety of kava plant.
- The effect one feels when consuming a considerable amount of kava is that of a relaxing and soothing feeling.
- While tradition dictates that it is drunk only during special occasions. This is not the case anymore in Vanuatu.
- Given the development of kava as a commercial commodity, many kava exporters now purchase kava from farmers. They then process it into powder kava and export to Fiji, New Caledonia, New Zealand, Australia and the USA.

The kava plant



The finished product



- It is also a fact that pharmaceutical companies and herbal supplement companies extract kavalactones from the kava plant using solvents such as acetone and ethanol and produce pills standardized with between 30% and 90% kavalactones.
- A kava pill usually has anywhere from 60 mg to 150 mg of kavalactones. By comparison the typical bowl of traditionally prepared kava beverage has around 250 mg of kavalactones.
- While in 2009, a local Vanuatu company, Vanuatu Beverage Ltd. launched Lava Cola (also called Kava Cola), a soft drink containing a kavalactones additive, marketed for its relaxing properties and described as an "anti-energy drink". It was described also as "producing the calming effect of kava without the muddy taste" in the hope of eventually reaching an international market.

Challenges

- 6 IP Legislations have not yet been gazetted, hence not enforceable;
- There is no national institution created to administer, manage and enforce IP laws in Vanuatu;
- Government policy does not appreciate or promote the strengthening of a strong IP system in Vanuatu;
- Lack of IP education and awareness given to policy makers and law makers, especially to inform them on the importance of having a strong IP System in Vanuatu;
- Although the Ministry of Trade and Commerce has an ad hoc role in administering IP laws, it lacks the financial resources, technical assistance and capacity to promote IPR;

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- Lack of collective management systems to manage copyright works on behalf of owners;
 - Ineffective collaboration between stakeholders pertaining to border control in preventing an influx of pirated goods;
 - Potential artists and creators may be residing in the rural areas or in the other islands of Vanuatu (other than in the commercial districts of Port Vila and Luganville). This makes it difficult for them to be made aware about their IP rights;
 - There is no testing plant or institution available to determine whether products sold in Vanuatu are genuine or fake;
 - The government generates income (import duties, VAT, business license and vendor license) from businesses that sell pirated goods. Hence, if these businesses are closed down, government revenue is affected.

Conclusion

- Vanuatu is in the process of acceding to WTO. If accession is absolute, Vanuatu is obliged to fulfill certain requirements. It is without a doubt, that a strong IP system will be one of these requirements; and
- Vanuatu must be prepared to take on the challenge and create a confident and robust IP System. Achieving this will help sustain a strong economy and ensure that the integrity of hopeful Ni-Vanuatu artists and innovators are protected at all costs.