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## **Briefing by the DTI, the DST and CIPC on the impact of implementation with respect to the Protection, Promotion, Development and Management of the Indigenous Knowledge Act (No. 6 of 2019) on Intellectual Property Laws Amendment Act (No. 28 of 2013)**

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### **INTRODUCTION**

The CIPC is a public entity that operates under the DTI and is a creation of the Companies Act which was promulgated in 2008. The Commission deals with the registration of intellectual property (IP) and companies and acts as a regulator of company and IP issues. All forms of IP registration are handled by CIPC. The CIPC also performs an education and awareness function.

Furthermore, CIPC acknowledges the Department of Science and Technology's legislative efforts culminating in the proposed *sui generis* protection of IK.

### **NOTEWORTHY ASPECTS OF PROTECTION, PROMOTION, DEVELOPMENT AND MANAGEMENT OF THE INDIGENOUS KNOWLEDGE ACT (NO. 6 OF 2019) & RELATED MATTERS UNDER THE AUSPICES OF DST**

It is our respectful view that CIPC lends its full support for a more centralised approach as proposed by DST with key departmental stakeholders becoming active and collaborative partners for the benefit of our key constituents – the communities who stand to benefit from an effective and cohesive framework.



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CIPC therefore acknowledges various aspects of the Protection, Promotion, Development and Management of the Indigenous Knowledge Act (No. 6 of 2019) and related matters under the auspices of DST, with specific reference to the following:

- The establishment of the National Indigenous Knowledge Systems Office (NIKSO) whose function would be to keep a register of indigenous knowledge which is national in scope. In fact, the DST already has a National Recordal System (NRS). It is noteworthy that CIPC has been cited by DST as integral to the NRS's value chain. Therefore, it is safe to assume that CIPC will have a role to play in collaboration with DST going forward.
- The establishment of an Advisory Panel to advise NIKSO. It is also important to note the establishment of this panel whose function will be advisory in nature.
- A person wishing to acquire the right to use IK shall apply to NIKSO for a licence and shall enter into a benefit-sharing agreement with NIKSO.
- The NRS referred above is supported by the National Indigenous Knowledge Management System (NIKMAS) linked through cyber infrastructure to Provincial IKS Documentation Centres.

Bearing the abovementioned aspects in mind, we respectfully urge all stakeholders that it would be imprudent for any single body/department to duplicate the structures already in place. Resources need to be configured in such a manner which is optimal in a collaborative environment.



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## KEY CONCERNS IN RESPECT OF INTELLECTUAL PROPERTY LAWS AMENDMENT ACT (NO. 28 OF 2013)

- This Act is not in force and academics have expressed an opinion in support of repealing it.
- IPLAA was promulgated in 2013 but no Regulations have been developed.
- South Africa's position in international fora such as WIPO is supportive of the developing countries' positions in that the preferred form of protection should be *sui generis* legislation and not IP-based legislation as contained in IPLAA.
- The intention of IPLAA is not directed at the protection of TK per se. The IP legislation which IPLAA amends do not protect knowledge or concepts per se.
- Parliamentary Committees have previously urged for legal certainty and were averse to a plethora of Acts which is the net effect of IPLAA.
- Section 56(c) of the IPLAA for example requires communities to register their designs, as a result the DTI has to go back to Parliament in order to get it to amend the amendments which is a cumbersome process.
- IPLAA does not address how IK is commercialized.

### GENERAL REMARKS ON IP POLICY LANDSCAPE

The Director-General of DTI previously instructed that any amendments to IP legislation be fully aligned with ITED's ongoing phased approach in terms of its National Intellectual Property Policy.



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CIPC has submitted to this process and is actively liaising with ITED in respect of amendments to patents, designs and trade marks legislation. This has resulted in a coherent approach to the development of IP laws in South Africa fully informed by a comprehensive policy direction. In respect of Copyright, CIPC is always open to collaborative efforts in respect of this domain of IP.

### **CONCLUDING REMARKS**

Consistent with recent discourse with the DTI, CIPC lends its support to DST, being a centralized approach. The DST is cognisant of CIPC's integral role in terms of the National Recordal System. It is safe to assume that CIPC will have a role to play in collaboration with DST going forward.

The concerns in respect of IPLAA noted above need to be borne in mind. In pursuance of legal certainty and non-duplication of structures, CIPC wishes to act in a manner consistent with South Africa's position in international fora. As a country, we support *sui generis* legislation and not IP-based legislation in the form of IPLAA.