



HOW TO COMMERCIALISE YOUR INTELLECTUAL PROPERTY WHILE MAINTAINING CONTROL

Intellectual Property Law Practice

INTRODUCTION

IP licensing is the grant of a right to use the intellectual property, usually for a fee, royalty or other consideration. It is one of the most commercially underutilised tools available to Nigerian businesses. A trademark, established through years of investment, can generate a continuous stream of licensing revenues from franchisees, distributors or commercial partners. Software developed for internal use can be licensed to third parties in related markets. A unique proprietary method or approach distinguishing a professional services firm can be packaged and licensed into other geographies. Content developed once could generate a continuous revenue stream over its entire commercial lifespan. The primary reason Nigerian companies do not harness this value is not because the opportunity does not exist but because IP licensing is technically challenging and poorly structured licensing arrangements often create more commercial and legal problems than they solve.

Nigerian IP law in this area requires strict compliance with applicable legal and regulatory requirements, and drafting errors tends to manifest themselves where their impact is most detrimental-in a commercial dispute or upon the expiry or termination of a license relationship.

1. SCOPE

The license scope establishes precisely what a licensee is entitled to do with licensed intellectual property, and importantly what it may not do. There are two classes of risks created by under-scoping a license. Under-scoping creates an insufficient business opportunity for the licensee such that it is unable to extract the commercial value it expected. Over-scoping confers unintended rights on the licensee which could lead to exploitation of the licensed IP, adversely affecting the licensor's interests or infringing on the licensor's business operations and contracts. The questions every Nigerian IP license must precisely answer include: the intellectual property rights to be licensed;

whether any permitted use of the IP is limited to specific uses only, or to all uses; the geographical area or territory within which a license operates; and whether any derivatives can be produced from the licensed IP, and who will be deemed to own the same. In terms of tax implications under the NTA 2025, revenue generated from Nigerian licensors' licensing arrangements is subject to income tax rates applicable depending on company size (30% for large companies; nil for small companies with turnover below 100 million). Gains on disposal of IP assets now fall into the category of a disposal and shall be taxed as a gain to the full market value of the asset at the time of disposal rather than at a flat 10% previously applied for capital gains tax rate.

2. EXCLUSIVITY

The decision whether a license shall be exclusive, non-exclusive or sole is perhaps the most critical decision and commercial consideration in IP licensing, and is very often wrongly understood.

An exclusive license affords the licensee exclusive rights in respect of the licensed IP to the exclusion of everyone, including the licensor, unless stated to the contrary. In the case of a non-exclusive license, the licensee is afforded a right to use the IP but may not prevent the licensor from granting equivalent or overlapping rights to third parties.

A sole license sits in the middle: the licensor agrees not to license its IP to third parties, but is entitled to use the IP in its own business. The term 'exclusive' is frequently used incorrectly in Nigerian IP licenses where the scope of what it relates to, the territory and duration over which it subsists, are undefined. As such, the term has no precise meaning and will be interpreted more favourably to the licensee than the licensor.

Parties should also note the competition law dimension of exclusive licensing arrangements. Under the Federal Competition and Consumer Protection Act (FCCPA), agreements that have the effect of substantially lessening competition in a relevant market may be subject to scrutiny by the Federal Competition and Consumer Protection Commission (FCCPC). Exclusive licence agreements particularly those with broad territorial scope or long durations may be characterised as anti-competitive restraints, especially in sectors where the licensor holds significant market power.

3. TERM AND RENEWAL

Every license agreement should specify the period of time for which the license rights subsist and provide for the procedures by which a renewal or termination may occur. Perpetual licenses do exist and can be commercially appropriate.

Exclusivity is also crucial in determining what sublicensing rights a licensee is entitled to under Nigerian law as a licensee does not have the right to sublicense any licensed IP without the licensor's written consent. Should the licensor permit this, the terms and conditions of sublicensing must be outlined in the agreement, including the right for the licensor to pre-approve all sublicenses before commitment and the consequences for the main license of a failed or breach sublicensing arrangement.

LICENSE AGREEMENT

More commonly, however parties find themselves in what is effectively a lifetime licensing arrangement because the term of the licence was never expressly defined. The term and renewal provisions must address the duration of the term of the license, renewal provisions, condition precedent to renewal, minimum royalty payments, maximum sales levels or minimum market share requirements.

4. ROYALTIES AND PAYMENT

The royalty provision of an IP license defines the financial return a licensor receives as compensation for use of its IP; it is often the source of most IP licensing disputes in Nigeria. Inadequate royalty provisions generally are characterised by imprecise definitions of "sales" or "revenue", excessively lengthy accounting periods, lack of (or inadequately narrow) audit rights and overly lenient clauses for late payment. Any correctly drafted royalty provision must specify:

the royalty base, using an acceptable definition to eliminate ambiguity about inclusions and exclusions; the royalty rate, with any multi-tiered rates clearly described; the calculation and payment period; audit rights afforded to the licensor, Currency and exchange rate risk; including appropriate notice periods and the right to appoint an independent auditor to the extent of under-payment above a specified amount at the licensee's expense; and any penalty for under-payment identified by an audit.



Nigerian IP license agreements involving royalty payments to foreign licensors remain subject to NOTAP registration requirement which must be complied to.; Contracts for the transfer of foreign technology must be registered with NOTAP within 30 days. Ranging from 100,000 for contracts less than five million to 20 million for contracts exceeding 10 billion.

Under the NTA 2025, withholding tax applies to royalties paid by the Nigerian licensee to the foreign licensor. The transfer pricing regime in the NTA 2025 provides that all intra-group royalty arrangements must be entered into at arm's length price and documented contemporarily. Registration with NOTAP must be made before the actual implementation of the licensing arrangement, and not subsequent to when the first royalty payment is due.

5. OWNERSHIP OF THE IP ON TERMINATION

In addition to addressing the formalities of bringing the licensing relationship to an end for instance, by considering how notice provisions will operate, when the rights of the licensee would cease, and what to do with the licensed materials after termination, provisions governing the termination of an IP licence must address the more commercially relevant question as to what value has been created in the relationship. In particular, questions arise concerning ownership of any improvements to the licensed IP made by the licensee during the period the IP is licensed to the licensee, the status of customer relationships developed based on the licensed brand, and who owns any data generated by use of the licensed technology.

There are specific termination obligations a properly drafted Nigerian IP licence should require of the licensee which includes:

- The obligation to cease all use of the IP licensed immediately on termination date;
- An obligation to return to the licensor, or to get destroyed under supervision, any materials embodying the licensed IP;
- An obligation to assign back to the licensor any improvements made, and subject to, the improvement ownership terms within the licence;
- An obligation to be restrained from further using any confidential information of the licensor received during the course of the licensing arrangement for post-termination.

Data generated through the use of licensed technology is becoming an important assets in it's own right and any IP licence should address the treatment of such data what should happen to data generated by use of the technology upon termination with

the same degree of care as it addresses IP ownership and transfer. As outlined in the NDPA 2023 and GAID, which takes effect on 19 September 2025, specific data protection obligations are imposed upon anyone processing personal data in Nigeria. IP licences and any provisions within them that address data sharing should be reviewed in light of both the NDPA-GAID framework and any data protection obligations applicable to the licensor.



CONCLUSION

IP licensing is one of the most effective tools currently available to Nigerian businesses for generating ongoing commercial value from the intellectual property they already possess, provided that it is carefully drafted with appropriate grant of rights, non-negotiable terms on exclusivity and royalty structures, and with the end-point addressed from the outset of any transaction; if poorly structured, it generates disputes and breaks commercial relationships, and worst cases, it can result in the permanent loss of IP which the licensor had or intended to leverage upon. The enhanced CGT rates under the NTA 2025 and IP taxation have made detailed tax planning and structuring of licensing arrangements more relevant and crucial than ever. The Nigerian businesses successfully leveraging the economic value of IP through licensing arrangements are those that made strategic investments upfront in the appropriate legal and tax structure.

Please note that the contents of this article are for general guidance on the Subject Matter. It is NOT legal advice.

For further information or to see our other service offerings, please visit www.goldsmithsllp.com or contact:



Colin Egemonye

Partner
T: (+234) 0201 291 7913
E: info@goldsmithsllp.com



Shola Adekunle

Senior Associate
T: (+234) 0201 291 7913
E: info@goldsmithsllp.com



Uzoamaka Ugoh

Senior Associate
T: (+234) 0201 291 7913
E: info@goldsmithsllp.com