

Draft Intellectual Property Policy, phase 1 released for public comment

On Tuesday the 8th of August, the Department of Trade and Industry released phase 1 of the draft Intellectual Property Policy for public comment. Interested and affected parties are afforded until the 9th of October to consider the document and submit comments. The draft policy seeks to facilitate the National Development Plan's goal of migrating South Africa from a resource-intensive economy to a knowledge economy.

As per the draft document, this entails the recognition and protection of knowledge as intellectual property, whilst balancing the need to achieve developmental goals. As such it seeks to outline broad policy objectives for all forms of recognized intellectual property including copyright, trademarks, patents, design rights and plant breeder's rights.

Many of Agbiz's members rely on the protection of intellectual property as a central pillar of their business, be it through the protection of trademarks and certifications of origins or through the development of technology and cultivars. As such, Agbiz will scrutinize the draft policy and prepare comments.

A similar, albeit controversial, draft document was released for public comment in 2013. The 2013 document advocated for a reduction of the protection afforded to plant breeders as this was, in our view, erroneously regarded as an impediment to agricultural development. This 2013 document failed to appreciate the extent to which research into genetics and plant varieties underpinned by legal recognition contributes to agricultural development in South Africa, especially given the increasingly uncertain climate in our country. Whilst the draft document still has to be studied in depth, an initial reading reveals that the document does not focus on plant breeders' right in great detail but rather defers this to a later 'phase' in the development of the policy process.

This approach seems quite logical if one considers that the Plant Breeders Right Amendment Bill is currently in the advanced stages of the Parliamentary process, so a drastic departure from its provisions would certainly not be logical. Although the document is scant on detail, it is promising to note that intellectual property is expressly acknowledged as a genus of 'property' that is protected under section 25 of the Constitution. Furthermore, it is promising that the document recognized the need to give effect to international agreements such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the International Convention for the Protection of New Varieties of Plants (UPOV).

From a first reading of the document, it seems clear that the first phase of the policy development is focused on the link between IP the public health sector, biodiversity and traditional knowledge. As far as agriculture (predominantly plant breeder's rights) are concerned, the document states that it is '*an evolving discussion that has parallels in other developing countries with comparable natural heritage*', which seems to point towards an ongoing or future discourse on the topic.

Aside from plant breeder's rights, the document does make reference to the current recognition of collective marks, certification marks and marks of geographical origin, which are all essential

Disclaimer: Everything has been done to ensure the accuracy of this information, however, AGBIZ takes no responsibility for any loss or damage incurred due to the usage of this information.



aspects to the marketing of products emanating from the agribusiness sector. The question of whether wine, spirit and agricultural geographical indicators would be sufficiently protected by a migration to the Agricultural Products Standards Act is not dealt with in this draft policy document, but expressly relegated to the second phase of the policy development. Agbiz will monitor this space in anticipation of additional documents being published under 'phase two' of the policy development.

ENQUIRIES:

THEO BOSHOFF, AGBIZ HEAD: LEGAL INTELLIGENCE

E-mail: theo@agbiz.co.za