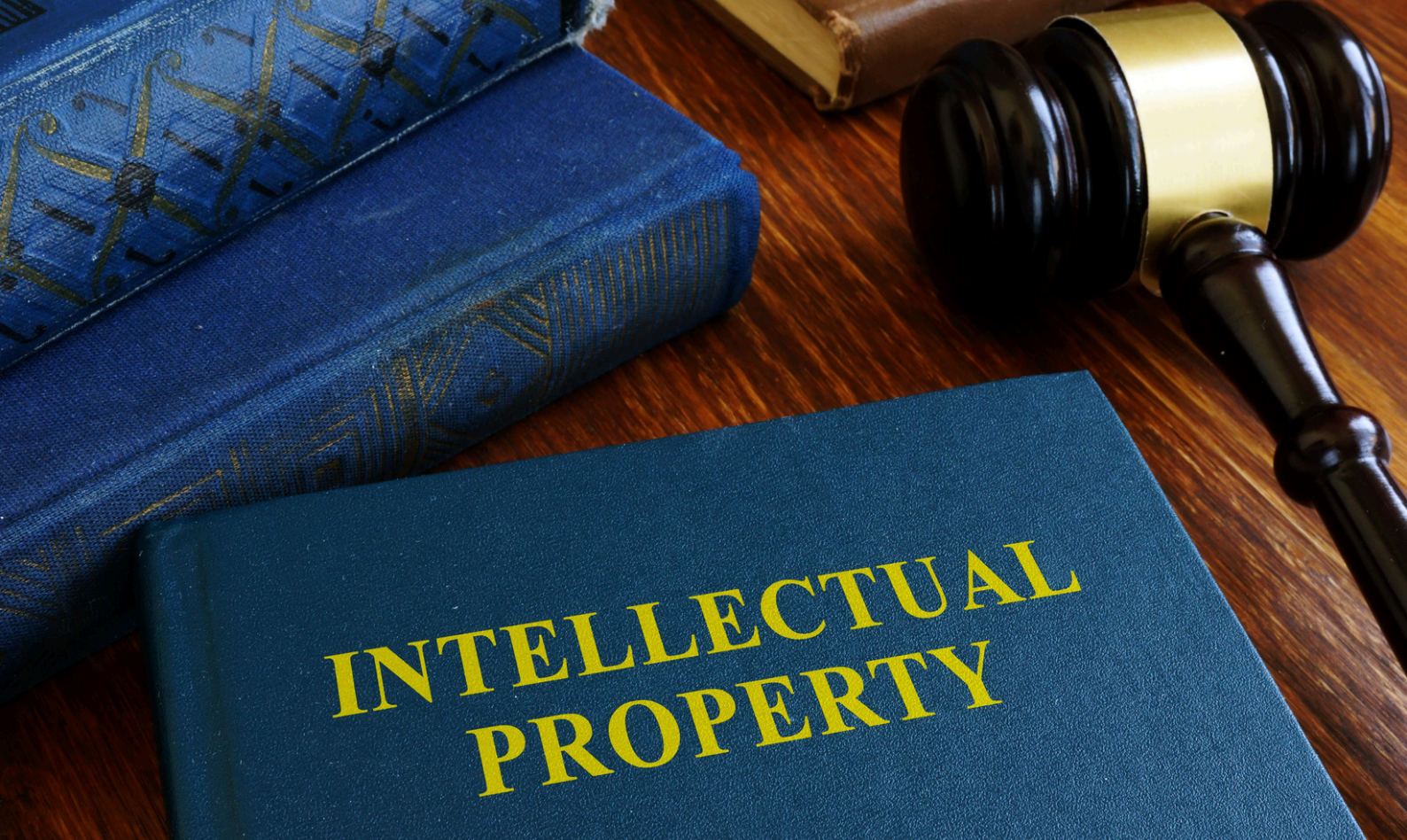




# Who Owns What? Determining Intellectual Property Ownership in Kenya's Innovation Landscape

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Kenya's innovation ecosystem is thriving; however, as the innovation ecosystem grows, so do disputes and ambiguities surrounding Intellectual Property (IP) ownership.

The term "intellectual property"(IP) is reserved for types of property that result from creations of the human mind: the human intellect i.e. Literary and artistic works, e.g., books, novels, software, photographs etc which are governed by laws concerning **copyright**; Inventions, e.g., a new form of sewing machine, a harvester etc which are covered by laws concerning **Patents**; Shape and form of a product e.g. shape of a bottle, which are protected as **Industrial designs**; Logos, names, symbols, phrases etc protected as **Trademarks**; Confidential information of commercial value that are protected as **Trade secrets**; New plant varieties that are governed by the **Plant Breeders** laws; and knowledge passed down through generations, including agricultural practices, medicinal knowledge, and other innovations and folklore which are protected under **Traditional Knowledge and Cultural Expressions** Laws.

Intellectual Property ownership incentivises creators and inventors by granting them exclusive rights to profit from their work. By protecting IP, innovation and entrepreneurship are encouraged, thus stimulating economic growth.

Defining IP ownership is important because it establishes exactly who has the right to use, protect and exploit the IP assets

## Key Scenarios in IP Ownership

### i) Individual Innovators and Creators



If an innovation or creative work is developed entirely by one person, and that person is not under any contract or employment, then they own the IP by default. Under Section 31 of the Copyright Act, copyright vests in the author of the work. Section 30 of the Industrial Property Act also grants the right to a patent/utility model to the inventor. The inventor is the person who invents the machine, method, apparatus, etc. Similarly, for Industrial designs, the person who created the Industrial design is the owner of the Industrial design, and for Plant Varieties, the person who develops a new plant variety is conferred ownership.

**Example:** Furaha, a freelance software developer, creates a mobile application that helps farmers detect crop diseases using AI. He develops the app in his personal time, using his own equipment and without any third-party funding or employment relationship. Furaha owns the IP to the mobile application.



### ii) Employer and Employee

Under Kenyan law, IP created by an employee in the course of employment belongs to the employer unless there is a contract that says otherwise. The IP must be created within the scope of the employee's duties and developed using the company/organisation's time and resources. IP created outside the scope of employment and using the employee's private resources remains the property of the employee.

When it comes to inventions developed by an employee, if the invention is of exceptional importance and the employer receives monetary benefits from it, the employee should receive equitable remuneration, taking into consideration the salary and the benefits derived by the employer from the said invention.

**Example:** Amani works as a mechanical engineer in a manufacturing company. She invents a machine that recycles waste while working on a company-assigned project. Since the invention relates to her employment and was developed during work, the employer owns the IP, not Amani.

**Example:** Furaha, a freelance software developer, creates a mobile application that helps farmers detect crop diseases using AI. He develops the app in his personal time, using his own equipment and without any third-party funding or employment relationship. Furaha owns the IP to the mobile application.

### iii) Independent Consultants and Contractors

For independent consultants and contractors, the IP ownership depends on the contract. Unless the contract states otherwise, Kenyan IP law typically assumes that the consultant/contractor owns the IP. This makes it important to have a clause in the contract that transfers IP ownership to the hiring party or have an IP Transfer Agreement. Without such a clause or Agreement in place, the consultant or contractor retains ownership.

**Example:** A start-up hires Kazuri, a freelance graphic designer, to design their logo. There's no written agreement transferring rights. Even though the startup paid Kazuri, he technically owns the IP to the logo. The start-up will only have a limited license to use it, and Kazuri can create legal problems later if they try to trademark or sell the brand.



### iv) Joint Creation

Where two or more people or organisations jointly create or invent something, the ownership is shared among the parties unless agreed otherwise. The joint owners must make decisions together or specify the rights owned in the Co-ownership agreement or clause. Joint ownership is mostly common in academic collaborations, start-up co-founders and university-industry partnerships.

**Example:** A startup partners with researchers from a local university to develop a smart irrigation system. Both parties then contribute intellectually and financially. They jointly own the IP. When commercializing, both must agree, or a licensing agreement must outline how revenues and responsibilities will be split.

#### **v) Donors - Funded Innovations**

Donors or grantors often fund projects involving research and development and technology development. In such cases, IP ownership is governed by the grant agreement. In many scenarios, the grant agreements provide that the grantee owns the IP or there will be joint ownership between the donor and the recipient or all the IP will be owned by the recipient, and the donor retains a royalty-free license to use the IP among many other scenarios.

**Example:** An NGO receives funding to build a plastic waste upcycling prototype. The grant agreement states that all the IP belongs to the NGO, but must be licensed for free for use within a certain program. In this scenario, the NGO owns the IP but must provide access to others in the program.

It should be however noted that under Kenya's Copyright Law, even when copyright is transferred, the creator retains the moral rights. Moral rights entitle the author to claim authorship of the work and object to distortion or mutilation prejudicial to his honour or reputation. These rights are independent of the economic rights and are non-transferable.

#### **vi) IP ownership upon the death of the creator**

IP rights are inheritable. Where an owner dies, the rights become part of their estate and will pass in accordance to his/her will if he/she had a will or to the beneficiaries under the rules of intestacy where there is no will.

If it was a joint ownership and a co-owner dies, his/her IP rights pass to the beneficiaries or in accordance with the will.

**Example:** Author Baraka writes a popular book on Internet of Things and registers the copyright. Upon his death, his children inherit the IP and can continue to receive royalties or even license the book for translations and adaptations.

### **vii) IP created by a Minor**

Under Kenyan Law, a minor is defined as a person who is under the age of 18 years. Minors can legally create IP and own the rights since IP has no age restrictions. However, they cannot enter into legally binding contracts or fully manage their IP rights. They require legal guardians until they reach the age of majority (18 years). This is because contracts with minors can be voided unless signed by a guardian.

Guardians act on behalf of the minor in any transaction or legal matter involving the minor's IP, e.g. management, commercializing and enforcing.

**Example:** A 14-year-old invents a new kind of electric bicycle during school holidays. She owns the IP to the electric bicycle. Her parents or guardian may sign licensing deals on her behalf until she turns 18.

The question of “who owns what” is not just a legal curiosity but a fundamental question for Kenyan innovators and MSMEs to understand how IP laws work, safeguard their creations and inventions, sow seeds of innovation and unlock the full economic potential of their IP.

## **Guidelines for MSMEs and Innovators**

### **I. Seek Advice from an IP Expert**

Before hiring employees or independent contractors to create anything for your business or creating anything for another party/business, seek advice from an IP expert to prevent ownership disputes.

### **II. Ensure you sign Written Agreements**

IP Agreements/ IP Clauses in agreements are really important. They should clearly state: Who owns the IP created, when ownership transfers, who can use or exploit the IP, who pays for the work and whether future improvements or modifications are allowed.

Do not allow employees, freelancers, developers, designers or consultants to begin any work before a signed contract is in place.

It is also important to include a confidentiality clause to protect trade secrets and any unpublished information.

### **III. Develop Internal Policies on Employee Inventions**

Businesses should have internal rules that stipulate: Types of inventions that fall within company activities; Employee duty to notify the employer about any invention; How the company handles such notifications; Confidentiality rules; and Whether employees will be rewarded for inventions. These policies should, however, align with national IP laws.

#### **IV. Leverage on the gDIH**

The Green and Digital Innovation Hub (gDIH) fosters an environment where IP ownership is both recognized and managed to foster innovation and drive sustainable growth by providing various resources, training, platforms and support to innovators to protect their inventions and creative works. Other than IP support, the hub also provides services such as Test before Invest, Access to Finance, Skills and Training & Innovation and Ecosystem Development.

To become part of our vibrant community, please fill out the [membership form](#). For any inquiries or special requests, feel free to email us directly at [info@gdih.org](mailto:info@gdih.org). We look forward to supporting your journey toward impactful and sustainable innovation in the green and digital space.

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