

**THE INFLUENCE OF INTELLECTUAL PROPERTY
RIGHTS ENFORCEMENT ON MULTINATIONAL
COMPANIES' DECISION TO INVEST IN EAST AFRICA**

BY:

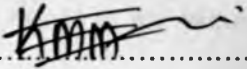
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DECLARATION

This research project is my original work and has not been presented for examination to any other university.

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DEDICATION

This project is dedicated to my dear wife and children whose love and patience enabled me to finalize.

ABSTRACT

The objective of this study was to determine the influence of Intellectual Property Rights enforcement on Multinational companies' decisions to invest in East Africa. The respondents were made up of public relations officers or officers in charge of corporate governance in respective MNCs.

The study found that respondents were aware of the intellectual property rights enforcement. The key meaning of intellectual property rights were; protecting one's ideas from being stolen or exploited commercially, allowing the creator or owner to benefit from his or her own work or investment and providing incentives to individuals by offering them recognition for their creativity and material reward for their market inventions. The study further found out that multinational firms had experienced infringement of intellectual property rights in the form of copying, piracy and internet based infringements.

Discriminant model was developed and then tested for accuracy in obtaining predictions. One major finding of the study is that all the discriminate variables were significant in the model (showing a clear difference of the mean values between the two categories). The study further demonstrated that the two groups were heterogeneous ; meaning that Copy Rights, Patents, Trademarks and Trade Secrets could be used to group multinational firms as either having considered intellectual property rights when making investment decision in East Africa or not. This is demonstrated by the hit rate of 94.1% (percentage of correctly classified cases). The usage of the model developed for discrimination is therefore recommended for use since it will classify 94.1% of the cases correctly.

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CHAPTER ONE:

INTRODUCTION

1.1 Background of the Study

Intellectual property places a premium not on the traditional factors of production nor on the primary government investments but on new ideas, creations innovations and Technologies (Sihanya, 2001) The progress of human beings and of economies at large rests on the capacity to create new innovations not just in the area of technology but also in the areas of creative industries such as music, culture, drugs, software, books and films which ultimately spurs economic growth, creates new jobs and industries and enhances the quality and enjoyment of life (Ouma, 2004)

Key industries which need to embrace intellectual property rights enforcement include music, pharmaceutical, chemical and allied, fast moving foods and building and construction industries. Specifically the music industry has the potential to make a profound contribution to the economy of a country especially if well nurtured and protected. The creative industries currently account for more that 12% of the world's gross domestic product (World Bank, 2005). The management of the development of Intellectual Property Rights (IPRs) should thus focus on efficient ways of commercializing innovations and creations. Music had the potential to create capital for creative authors and contribute to the growth and development of economies of developing countries (Anderman, 1998).

East African countries as members of World Trade Organization (WTO) are obliged by the Agreement of Trade-Related Aspects of Intellectual Property (TRIPS) to give effect to a set of basic minimum principles and rules covering copyrights, trademarks, geographical indications, industrial design patents, and layout designs of integrated circuits, protection of undisclosed information and the enforcement of intellectual property rights. The challenge for these countries is to design policies and standards of IPRs that will generate wealth to the creators and innovators and be of economic benefit to the country (B & Howells, 2000).

It is thus important to assess the influence of IPRs enforcement on multinational companies' decisions to invest in the East African region. This study therefore seeks to examine the influence of IPRs enforcement on multinational companies' decision to invest in the region.

The East African region growth in foreign direct investment (FDI) has been phenomenal in the last three decades. Prior to the recent economic and financial crisis, global FDI had risen to an all-time peak to reach \$1,833 billion in 2007 well above the previous time all high set in 2000 (UNCTAD, 2008). The production of goods and services by an estimated 79,000 multinational corporations and their 790,000 foreign affiliates continued to expand with their FDI stock exceeding \$15 trillion in 2007. Their total sales amounted \$31 trillion with value added by foreign affiliates worldwide estimated at 11 percent of world's gross domestic product employing close to 82 million people (UNCTAD 2008). Interpretation of these trends are commonly infused with much

enthusiasm as growth is believed to be the single most important factor affecting poverty reduction and therefore FDI is central in achieving this objective, since FDI is considered as a key ingredient for successful economic growth in developing countries (Bainbridge, 1995).

Many developing countries have developed a renewed interest in FDI as a source of capital due to the decline in official development assistance (ODA) in the 1990s. FDI usually represents a long-term commitment to the host country and can contribute significantly to gross fixed capital formation in developing countries. FDI has several advantages over other types of capital flows, in particular its greater stability and the fact that it would not create obligations for the host country. In addition to being a source of capital, FDI has other potential benefits to host countries which include technology transfer, new management skills, market know how and job creation. FDI can also be potentially harmful to host economies if results in resource exploitation, pollution, abuse of market power among other problems. Negative consequences of FDI can be avoided with proper regulation (Berenbeim, 1987).

1.1.1 Intellectual Property Regimes

The ordinary common sense description of Intellectual Property (IP) is that it simply comprises all those things that are “Intellectual” because they emanate from the use of the human brain (Philip & Firth, 2001). The legal description of IP rights differs from the colloquial in that it focuses upon the rights which are enjoyed in the produce of the mind rather than upon the produce itself (Philips, 2001).

According to World Intellectual Property Organization (WIPO, 1967) IP refers to the products of the mind: inventions, literary and artistic works, symbols, names and images used in commerce. Intellectual property rights are intangible rights that allow the creator or owner of a patent trademark or copy right to benefit from his or her work or investment. WIPO has classified IP into two categories: Industrial Property that includes patents for inventions, trademarks, industrial designs and geographic indications. The other category is copyright which includes literary works such as novels, poems and plays films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms and those of broadcasters in their radio and television programs (Collins, 2000).

The need for Intellectual property became evident when foreign exhibitors refused to attend the international exhibition of inventions in Vienna in 1873 because they were afraid their ideas would be stolen or exploited commercially in other countries. The importance of intellectual was first recognized in the Paris Convention for the protection of Industrial Property in 1883 and in the Bern Convention for the protection of literary and artistic works in 1886.

Intellectual property rights are like any other property rights. They allow the creator or owner to benefit from his or her own work or investment. These rights are outlined in Article 27 of the Universal Declaration of Human Rights (UDHR, 1948) which sets for

the right to benefit from the protection of moral and material interests resulting from authorship of any scientific literary or artistic production (Davis, 2003).

Intellectual property protection provides incentives to individuals by offering them recognition for their creativity and material reward for their market inventions. They also attract foreign investors to invest locally in their products in the sense that counterfeit products are not entertained hence regional investment by multinationals which creates jobs for the locals. These incentives encourage innovation, which assures that the quality of life is continuously enhanced. Intellectual property rights reward creativity and is a valuable asset that may be exploited by firstly assigning whereby the ownership in the whole or part of transferred or licenses given in respect of it and may even be used as security for loan such as mortgage or charge. In 1996, Enid Blyton Copyrights were sold for US\$ 34 billion (the times of 24th january 1966)

In this age of satellite and cable transmission of broadcast, interactive media of computers, intranets and the internet, creation and transfer of entertainment and education, thousands of works are created daily and hundreds are also infringed (Ouma 2004).

1.1.2 Multinational Companies in East Africa

Most of the multi-national companies operating in East Africa have stepped up expansion plans, lured by the established of East Africa community common market which embrace borderless trade. Major multinational companies operating in East Africa include:

General electric, General Motors, Toyota East Africa, GlaxoSmithKline, Eltek, Heineken, East Africa Breweries, Sage Group, East African Portland Cement etc.

British American Tobacco, Nestle Kenya, Wectabix East Africa Limited, Bata Shoe Company and Cadbury East Africa are amongst the multinational corporations that already have announced multi-billion shilling expansion plans in the race to tap new demand in the emerging Eastern Africa region and part of North Africa. The expansion looks set to shore up the contribution of the manufacturing sector to the countries' GDPs and provide new jobs in the sector as their economies are recovering with optimism that it shall gain momentum in line with the goal to make the countries middle income economies.

Plans by Southern African Development Community, EAC and COMESA in 2008 to form a free trade area (FTA) covering more than 527 million people with an estimated combined gross domestic product of about \$624 billion have also enhanced the countries' appeal to multinational companies as a business hub. As a result, the multinationals are redrawing their territories, opting to have larger factories to feed different economies a move that has seen Nairobi emerge as a trading hub because of its proximity to a wider market including Central Africa, North Africa and Middle East markets.

The recent development is a departure from earlier trends where multinational companies either scaled back new investments in their operations in Kenya or moved their manufacturing plants to countries such as Egypt, which had emerged as a low cost producer, preferring to export finished goods back to Kenya. The aforementioned

scenario saw Kenya slowly emerge, though at a lower scale, as the third manufacturing destination in Africa after South Africa and Egypt and named as one of the growth poles in sub Saharan Africa by UNCTAD after South Africa and Nigeria. Some of the firms that have left the Kenyan market in recent years due to poor utility infrastructure, high corruptions rate in public service, and general stagnation of the Kenyan economy included Reckitt Benckiser, Colgate Palmolive, Johnson & Johnson and Procter & Gamble, which have either transferred or restructured their operations.

Egypt had emerged as the favored destination for the multinational firms leaving Kenya, but the emerging political instability in the northern Africa country coupled with lack of proximity to central and parts of southern African countries such as Malawi, DRC Congo and Zambia, have made it unattractive to investors. Egypt had previously used heavy subsidies in the power and petrol products which did cost its tax payers \$12 billion annually to lure industrialists, but the country is now set to withdraw the incentives by 2014 making most of the multinational corporations which had previously relocated there to ponder over their next move. BAT, for instance, has in the recent few years spent more than Sh5 billion in upgrading its Nairobi plant from where it serves about 17 markets within the Common Market for Eastern and Southern Africa and Indian Ocean Islands. The firm closed its manufacturing plant in Rwanda and Uganda and made the Kenyan plant one of the group's four strategic factories in Africa and Middle East.

1.2 Statement of the Problem

Hymer in his theory of a firm's specific advantages FDI states that access to raw materials, economies of scale, and intangible assets such as trade names, patents, superior management etc reduce transaction costs when replacing an arm's length transaction in the market by an internal firm (Hymer, 1976).

Scholars interested in IPR's have focused on the rights of creators as well legal structures of the industry. (Maskus, 2002) focused on the role of IPR's in encouraging Foreign Development Investment and Technology Transfer for the Developed countries. (Ouma 2004) copyright and the Music industry on Africa focused on the legal structure for IPRs in relation to Music in Africa. (Sihanya, 2001) Integrating innovation and intellectual property into the constitution, (Sihanya, 2001) making TRIPS work for African Development focuses on integrating IPRs in the constitution. None of the studies have focused on the role of IPRs enforcement of foreign direct investment in the East African region. This study therefore seeks to answer the question "does Intellectual Property Rights enforcement influence Multinational companies' decision to invest in East Africa?"

1.3 Objective of the study

To determine the influence of Intellectual Property Rights enforcement on Multinational companies decisions to invest in East Africa.

1.4 Significance of the study

The findings of this study would be of beneficial firstly to; the management of multinationals in the East Africa region as they would be able to assess the effect of IPR enforcement on their investment decisions. The management of MNCs would also be aware of their IP rights and know how to get protected in the event of infringement.

Secondly the governments of the East Africa countries would be able to create enabling environments for maximum utilizations of any Foreign Direct Investment by multinational companies in the region. The various governments would also be in a position to improve on the enforcement of policies and legislation of IPRs. The prospective investors would be in a position to analyze the IPR enforcement benefits to various industries. WIPO would also find the study of use in assessing the impact of IPRs in East Africa.

Finally the study would be useful to scholars because it was expected to expand their knowledge in IPRs. This research would greatly contribute to academia in the sense that less research had been done on intellectual property rights in the East Africa region. It would also be useful as a guide for further exploratory and confirmatory research into IPRs practices in East Africa.

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

The literature reviews various studies and theories in support of the enforcement of intellectual property rights on foreign direct investment (FDI) by multinational companies.

2.2 Determinants of FDI Theory

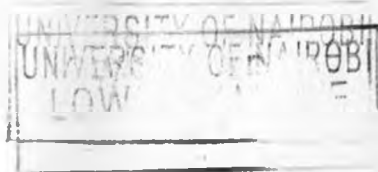
2.3 Intellectual Property Rights

Intellectual Property Rights (IPRs) award to investors, artists and institutions certain exclusive rights to produce, copy, distribute and license goods and technologies within a country. Intellectual property protects applications of ideas that are of commercial value. According to (WIPO, 2005) Intellectual Property (IP) refers to the products of the mind; inventions, literary and artistic works, any symbols, names, images and designs used in commerce. In the same vein World Trade Organization (WTO) has offered its own definition to state that IPR are given to people to prevent others from using their minds and creations. (Comish, 1996) argues that IPRs are essentially negative rights. Rights to stop others doing certain things- rights to stop counterfeiters, imitators and even in some cases people who have independently reached the same ideas from exploiting them without the license of the right owner. Some aspects of IP confer positive entitlements such as the right to be granted a patent or to register a trademark upon fulfilling the requisite conditions (Drucker, Harper, & Row, 1986).

Different forms of IPRS operate in distinct fashions and WIPO (2005) has divided them into the following categories: Copyrights, which grants the authors, artists and other creator's protection for their literary and artistic creations. The beneficiaries of related rights include performers such as actors and musicians, producers of sound recordings such as cassettes records and compact discs and broadcasting organizations in their radio and television programmes. The most significant limitation is the fair-use doctrine, under which it is lawful to make a limited number of copies for research and educational purposes.

The patent which is an exclusive right granted for an invention, which is a product or a process that provides new way of doing something or offers a new technical solution to a problem. A patent provides protection for the invention for a limited period of twenty (20) years. Patent protection means that the invention cannot be commercially made, used or distributed or sold without the patent owners consent. A patent owner has the right to decide who may not use the patented invention by giving permission to use by way of license to other parties to use the invention or selling the invention to somebody else. Thus patents establish a protected market in return for revealing technical knowledge.

A trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise. A trademark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services or to authorize others to use it. Trademarks promote initiative and enterprise



worldwide by rewarding the owners of trademarks with recognition and financial profit. Trademarks encourage firms to invest in name recognition and product quality. Trademark protection also hinders the efforts of unfair competition such as counterfeits to use similar distinctive signs to market inferior or different products or services. If trademarks were not protected, rival firms could pass off their lower-quality goods as legitimate versions of those produced by recognized companies.

Industrial designs are what make an article attractive and appealing hence they add to the commercial value of the product and increased its marketability. When an industrial design is registered the owner has an exclusive right against unauthorized copying or imitation if the design by third parties. Protecting industrial designs encourages creativity in the industrial as well as manufacturing sectors as well as in traditional arts and crafts.

Geographical indication is a sign used on goods that have specific Geographic origin and possess qualities or a reputation that are due to that place of origin. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local geographical factors such as climate and soil. Geographic indications are understood by consumers to denote the origin and quality of products and may have acquired reputation which if not adequately protected may be misrepresented by dishonest commercial operators.

Trade secrets where a company keeps information secret, usually by enforcing a contract under which those given access to information are not permitted to disclose it to others.

Several technologies do not fit comfortably into these traditional categories of protection. Electronic transmissions of internet materials, broadcasts, and databases may not be adequately protected by standard copyrights and two recent treaties that is the WIPO Copyright Treaty and the WIPO Performance & Phonograms Treaty will call for stronger protection in certain dimensions.

Fink and Maskus (2002) found that IPRS have seen profound changes over the last two decades as rules on how to protect patents, copyrights trademarks and other forms of IPRS have become a standard component of the international trade agreements. Most significantly during the Uruguay Round of Multilateral negotiations (URMN, 1986-1994), members of what is today the World Trade Organization (WTO) concluded that the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which set out minimum standards of protection, that most of the world's economies must respect. Additionally IPRs rules have been created in various bilateral and regional trade agreements in a number of intergovernmental treaties negotiated under the umbrella of World Intellectual Property Organizations (WIPO). The process of globalization has enabled intellectual property to cross international boundaries more easily. Indeed for many rich countries IPR-intensive goods and services constitute a rising share of the income they derive from their presence in foreign markets. It is therefore not surprising to see political economy forces at work in these countries leading governments to raise IPR as a key negotiating issue in international trade agreements.

According to Maskus (2002) there are two central economic objectives to any system of intellectual property rights protection. The first one is to promote investment in knowledge; creation and business innovation by establishing exclusive rights to use and sell newly developed technologies, goods and services. If the IPRs are absent economically valuable information could be appropriated without compensation by competitive activities. The second goal is to promote widespread dissemination of new knowledge by encouraging or requiring right holders to place their inventions and ideas on the market. Information is a form of public good in that it is inherently non-rival and moreover developers find it difficult to exclude others from using it. In economic terms it is socially efficient to provide wide access to new technologies and products once they are developed at marginal production costs. Such costs could be quite low for they may entail simply copying a blueprint or making another copy of a compact disk or video. Maskus (2002) has further observed that there is a fundamental trade-off between these objectives in that an overly protective system of IPRs could limit the social gains from invention by reducing incentives to disseminate its fruits whereas an excessively weak system could reduce innovations by failing to provide an adequate return on investment. Thus a policy balance must be found that is appropriate to market conditions and conducive to growth.

Maskus (2002) has further analyzed the positive impacts of IPRs as stimulating economic growth and development. The three interdependent channels through which technology is transferred across borders include international trade in goods and services including pharmaceuticals, electrical machinery and professional instruments, foreign direct

investment (FDI) of products and technologies and contractual licensing to technologies and trademarks to unaffiliated firms, subsidiaries and joint ventures. IPRs could also play a significant role in encouraging innovation, product development and technical change. The negative impact or concerns of IPRs according to Maskus (2002) are that in the developing economies, significant amount of labour is employed in unauthorized copying of goods enjoying IP. In a survey conducted in Lebanon in 1996 by Maskus (2002), it was observed that 5% of the employees in the industry copying software would be displaced with a stronger enforcement of IPRs. The other major concern for IPRs is support for monopoly pricing that patents generate considerably higher prices for protected drugs than for copied or generic drugs Maskus(988)

2.4 Intellectual Property Rights Enforcement

Intellectual property is all around us. Every product or service that we use in our daily lives is till the result of a long chain of big or small innovations, such as improvements in design or changes that make a product look or function properly. Innovative and creative ideas are at the heart of most successful businesses. Ideas by themselves add little value. They need to be developed, turned into innovative products or services and commercialized successfully in order to reap the benefits of innovation and creativity. Intellectual property, patents in particular, can be crucial for turning innovative ideas and inventions into competitive products that significantly increase profit margins. The value of intellectual property can only be appreciated, and it's potential for providing opportunities for future profit realized, if the intellectual property rights embodied therein are recognized and effectively enforced (Kaplan & B, 1967).

Enforcement is the act or process of compelling compliance with a law, mandate, command or decree. With regard to intellectual property rights (IPRs), enforcement denotes compelling recognition, compliance and respect of the IP rights conferred by the patent, trademark, industrial designs, copyrights or other category of IP (Odek, 2006). Enforcement of intellectual property rights is justified on the basis that rights have no value unless they are enforced. For this reason, litigation is the *sine qua non* in IP enforcement. For intellectual property rights to serve the purpose of promoting creativity and inventiveness, effective judicial service is needed. A right without a remedy is a fantasy. If judicial support for IP rights is feeble, mobilization of creativity wanes. Innovators will not invest in inventing, developing, implementation and marketing of new technology unless they believe that the system is real (May C, 2000).

The main objective of acquiring IP protection is to enable the right holder reap the fruits of creativity and inventiveness. IP can only generate benefits if the rights are enforced otherwise infringers, pirates, counterfeiters and other joy riders will reap the fruits and take advantage of the absence of preserving the legal validity of IP rights. (Odek, 2006) further indicates that enforcement of IP rights is needed to balance rights and obligations between the right holder and the society at large. The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology. He exclaims that, as a general rule, if the patent holder obtains a monopoly for something that does not fulfill the statutory requirements, and then the public has been shortchanged. Enforcement of intellectual

property rights prevents abuse of rights. Enforcement aims at preventing abuse of exclusive rights granted to the right holder. Any excessive control by the right holder may unduly limit the ambit of public domain and thus prevent public domain from embellishing creative innovation.

Odek (2006) also indicates that the burden of enforcing IP rights rests with the holder of such rights. It is up to the right holder to identify any infringement/counterfeiting of its IP and to decide what measures to take. Whereas in most cases, civil proceedings would suffice, in the case of counterfeiting and piracy, criminal actions are available options. In the case of *Doshi Iron Mongers –v- Department of Weights and Measures, Kenya Industrial Property Institute, Kenya Bureau of Standards and others*, the High Court sittings in Nairobi held that remedies in respect of infringement of intellectual property rights are available to the right holders only. The court re-affirmed that it is the duty of the right-holder to act to protect his rights from continued infringement. The court noted that enforcement of intellectual property rights could only be done by the right holder of the intellectual property and not any statutory bodies unless expressly mandated by statute and enabling legislation.

2.5 Intellectual Property Rights enforcement on FDI decisions by multinational companies

Conventional wisdom holds that strong intellectual property protection is needed to attract foreign investment in less developed countries whereby all the East African countries fall, because firms are reluctant to invest in foreign countries unless they are assured of protection of their intellectual assets and financial investments. However

recent empirical research, questions this conventional wisdom. As Carsten Fink, Keith Maskus, Carlos Primo Braga and other economists have shown, intellectual property enforcement is more likely to attract FDI if two additional conditions are met (Maskus, 2002, pp. 130-131; Primo Braga and Fink, 1998, p. 164). First, a country needs to have a strong capacity to imitate foreign products and technologies. If local competitors are unable to copy these products and technologies, the business interests of foreign firms are unlikely to be threatened and intellectual property protection will be necessary. Second, the country needs to have a sufficiently large market to enable foreign firms to capture economies of scale or scope (Herald, 2003). In a country that lacks such a market, foreign firms are unlikely to find it advantageous to move their productions abroad.

While strong intellectual property protection is a main concern for marketing decisions, a decision to relocate manufacturing facilities is likely to be determined by such location advantages as market size and growth, local demand patterns, transport costs and distance from markets, low wage costs in relation to labor productivity, abundant natural resources and trade protection that could encourage “tariff jumping” investments” (Maskus, 2002)

While the strength or weakness of intellectual property protection will “influence a firm’s decision to internalize or externalize its intellectual assets,” it is only one of the many location advantages that influence such a decision (Ibid, 2001). As Keith Maskus put it in the FDI context, IPRs are an important component of the general regulatory system, including taxation, investment regulations, production incentives , trade policies, and competition rules. The joint implementation of an overall pro-competitive business environment matters most for FDI (Maskus, 2002).

Paradoxically, the strengthening of intellectual property protection may encourage firms to conduct more arms' length technology licensing, which in return will result in a reduction of FDI. As Primo Braga and Fink explained, intellectual property protection can affect foreign direct investment in two negative ways: "First, stronger IPR protection provides title holders with increased market power and could, at least theoretically, cause firms to actually divest and reduce their service to foreign countries. Second, higher levels of protection may cause transnational corporations to switch their preferred mode of delivery from foreign production to licensing (Primo, Braga, & Fink, 1998). Policy makers in both the developed and less developed worlds have increasingly considered intellectual property protection as a major means to attract foreign direct investment (YU, 2007). However, stronger intellectual property protection is not always needed to attract such investment. In the case of China, foreign investors were not always needed to attract by the strong intellectual property protection the country offers. Rather, they entered the Chinese Market because of drastically lower production costs, the country's enormous market, its efficient economic system and the preferential treatment of foreign investors. Thus, some commentators consider China a paradigmatic case for showing how rapid economic development can take place despite limited intellectual property protection (Abbott & Chow, 2005).

One of the problems facing multinational corporations (MNCs) in many of the developing economies around the world is intellectual property theft. A US congressional study placed the total annual cost to American companies from foreign

economic espionage ad US\$ 100 billion. AS of January 31,2000, in a poll on the World Trade Organization (WTO), and if so, what conditions should be made, 15 percent of the respondents voted for better intellectual property protection, while 13percente opted for the all-of the above option. Hence, 28 percent of the respondents would require better intellectual protection.

When their technology involved in foreign direct investment is pirated, many MNC's managers decry their losses and demand relief from their homes and host countries. When intellectual property is pirated, MNCs managers are faced with the fact that their company's intellectual property, often a major element of their competitive posture and possibly their primary competitive advantage, is no longer theirs exclusively and can be used against them. MNC's managers attempt to regain control of their technology by demanding that third parties retrieve it for them (Visser & Penna, 2002).

CHAPTER THREE:

RESEARCH METHODOLOGY

3.1 Introduction

This chapter discussed the methodology that was used in acquiring and synthesizing the study data. The elements discussed were; research design, target population, sample and sampling technique, research instruments, data collection procedures techniques and data analysis.

3.2 Research Design

The study used the inferential design. An inferential design is where one variable is used to explain the extent to which it affects another variable. This study therefore sought to answer the question of what is the effect of a variable on another which is an important aspect to consider for social researchers to identify the role and purpose of the research.

Inferential statistics are usually used to answer cause and effect questions and make predictions. They are also used to investigate the difference between and among groups.

In this study, the aim was to investigate the difference between MNCs who considered IPR when making investment decisions in East Africa and those who did not.

3.3 Target Population

This study targeted all Multinational Corporations (MNCs) operating in the East Africa region (Appendix III). Since the number of Multinational Corporations were few all of them were included in the study.

3.4 Data Collection Method

This study used primary data. Primary data was collected by use of a semi-structured questionnaire which had both open ended and close ended questions. The respondents in this study were public relations officers or officers in charge of corporate governance in respective MNCs. The questionnaires were administered using the drop and pick later method, e-mail and telephone interviews.

3.5 Data Validity and Reliability

Face validity which is commonly used in research of this nature, was applied to determine if the data collected were the relevant data. To establish face validity, the supervisor and a panel of lecturers were asked to give their opinion as to whether or not the data met this criterion. Measurement errors occur when the method is incomplete, which is generally caused by weak validity or weak reliability (Lekval & Wahlbin, 2001).

3.6 Data Analysis

The study used both descriptive statistics and Discriminant analysis technique. Descriptive statistics such as means, frequencies, standard deviations and percentages were used to analysis the demographic response from the respondents. Discriminant analysis is a technique for classifying a set of observations into predefined classes. The purpose is to determine the class of an observation based on a set of variables known as predictors or input variables. The model is built based on a set of observations for which the classes are known. This set of observations is sometimes referred to as the training set. Based on the training set, the technique constructs a set of linear functions of the predictors, known as Discriminant functions, such that

$Y = a + b_1x_1 + b_2x_2 + b_3x_3 + b_4x_4 + \epsilon$, where the b's are Discriminant coefficients, the x's are the input variables or predictors and a is a constant. These Discriminant functions are used to predict the class of a new observation with unknown class.

Y = Discriminant value; such those multinational firms whose decision to invest in east Africa were influence by intellectual property rights for 1 and those multinational firms whose decision to invest in east Africa were not influence by intellectual property rights for 0.

X₁ - Copy Rights

X₂- Patents

X₃- Trademarks

X₄- Trade Secrets

CHAPTER FOUR: DATA ANALYSIS, FINDINGS AND DISCUSSION

4.1: Introduction

The research objective was to determine the influence of Intellectual Property Rights enforcement on Multinational companies' decisions to invest in East Africa. This chapter presents the analysis and findings with regard to the objective and discussion of the same. The data was collected from the population of 19 Multinational companies'. Respondents were public relations officers or officers in charge of corporate governance in respective MNCs. The findings are presented in percentages and frequency distributions, mean and standard deviations.

4.2: General information

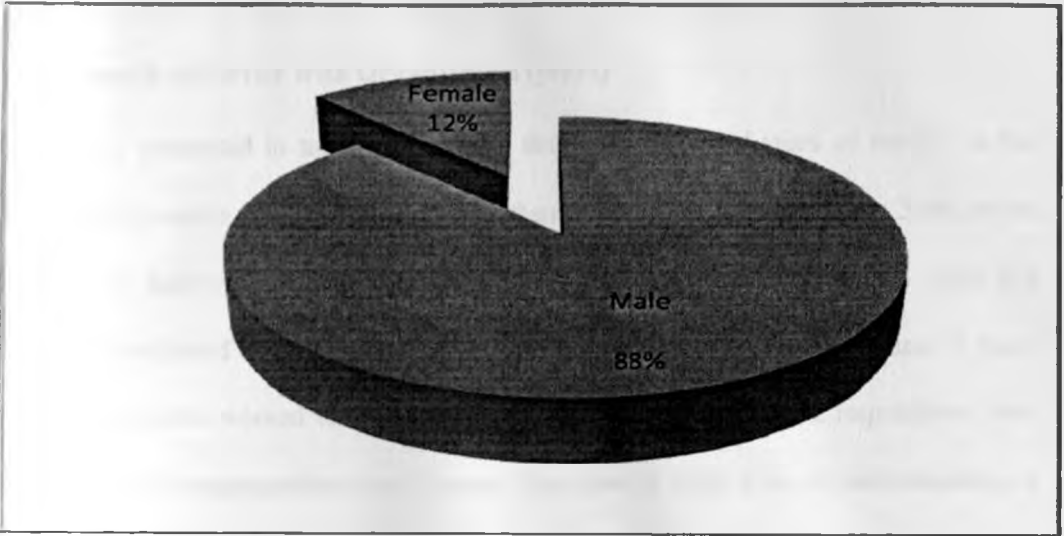
4.2.1 Response Rate

A total of 19 questionnaires were issued out. The completed questionnaires were edited for completeness and consistency. Of the 19 questionnaires used in the sample, 17 were returned. The remaining 2 were not returned. The returned questionnaires' represented a response rate of 89.5%, which the study considered adequate for analysis.

4.2.2: Distribution of Respondents on Gender

As can be observed, in Figure 1, the respondents were made up of 88% male and 12% female.

Figure 1: Gender Composition



Source: Research 2012

4.2.3 Level of Education

Majority (82%) of the respondents had master's degree, followed by 12% of the respondents with first degree qualifications and only 6% had PhD. This implies that, the respondents were able to understand and comprehend the issues under discussion in the research questionnaire,

Table 1: Distribution of Respondents by Level of Education

| | Frequency | Percentage |
|----------|------------------|-------------------|
| Graduate | 2 | 12 |
| Masters | 14 | 82 |
| PhD | 1 | 6 |
| Total | 17 | 100 |

Source: Research 2012

4.2.4: Length of Service with Organization (years)

The results presented in table 4.2.2 shows that the number of years of service in the Organization varies from a period of less than 10 years to over 20 years. 35% of the respondents had worked in their respective organizations for 16 to 20 years, 29% had worked for a period of 11 to 15 years, 18% had worked for a period of less than 10 years and 18% had also worked for period of over 20 years. Majority of the respondents have worked in their organization over 11 years, thus there is high level of understanding of their organization.

Table 2: Length of Service with organization (years)

| Number of service years | Frequency | Percent | Cumulative Percent |
|-------------------------|-----------|---------|--------------------|
| Less than 10 years | 3 | 18 | 18 |
| 11-15 years | 5 | 29 | 47 |
| 16 - 20 years | 7 | 35 | 82 |
| Over 20 years | 3 | 18 | 100 |
| Total | 17 | 100.0 | |

Source: Research 2012

4.3 Awareness of Intellectual Property Rights Enforcement

This section covers the questions posed to the respondents on awareness of intellectual property rights enforcement. The results are presented in terms of frequency, tables, pie charts and bar graphs as follows.

4.3.1 Awareness of the intellectual Property Rights Enforcement

The respondents were asked to state whether they were aware of the intellectual property rights enforcement. As indicated in table 4.2.3, the respondents unanimously indicated that they were all aware of the intellectual property rights enforcement.

Table 3: Are You Awareness of the intellectual property rights enforcement?

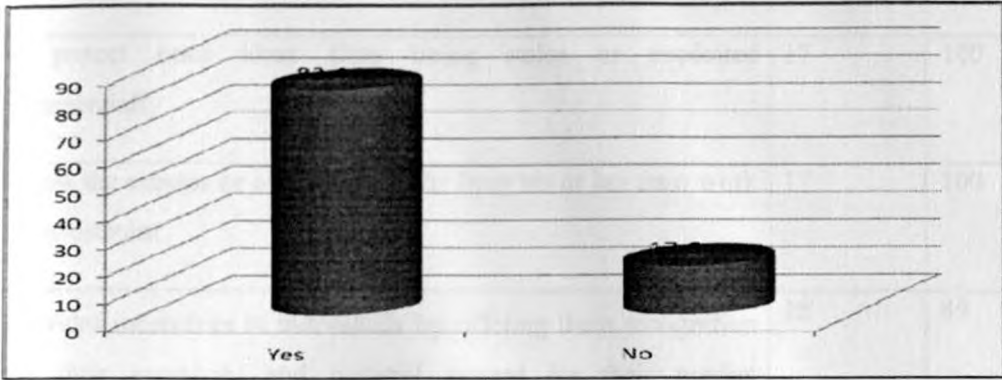
| | Frequency | Percent |
|-------|-----------|---------|
| Yes | 17 | 100 |
| Total | 17 | 100 |

Source: Research 2012

4.3.2 Did Your Organization Consider Intellectual Property Rights When Making Investment Decision In East Africa?

The findings in figure 4.2.4, shows that 82.4% of the respondents firms considered Intellectual Property Rights when making investment decision in East Africa while the remaining 17.6% did not consider Intellectual Property Rights when making investment decision in East Africa. It therefore means that IPR is a major component of decision MNC consider when venturing in East Africa

Figure 2: Consideration of Intellectual Property Rights When Making Investment Decision in East Africa



Source: Research 2012

4.3.3 Meaning of Intellectual Property Rights in East Africa

When asked to state the Meaning of Intellectual Property Rights in East Africa, 100% of the respondents indicated that Intellectual Property Rights in East Africa means protecting ones ideas from being stolen or exploited commercially as well as it allow the creator or owner to benefit from his or her own work or investment, 89% were of the opinion that Intellectual Property Rights in East Africa means providing incentives to individuals by offering them recognition for their creativity and material reward for their market inventions, while only 56% indicated that Intellectual Property Rights in East Africa means attracting foreign investors to invest locally in their products in the sense that counterfeit products are not entertained.

Table 4: Rating of the Meaning of Intellectual Property Rights in East Africa

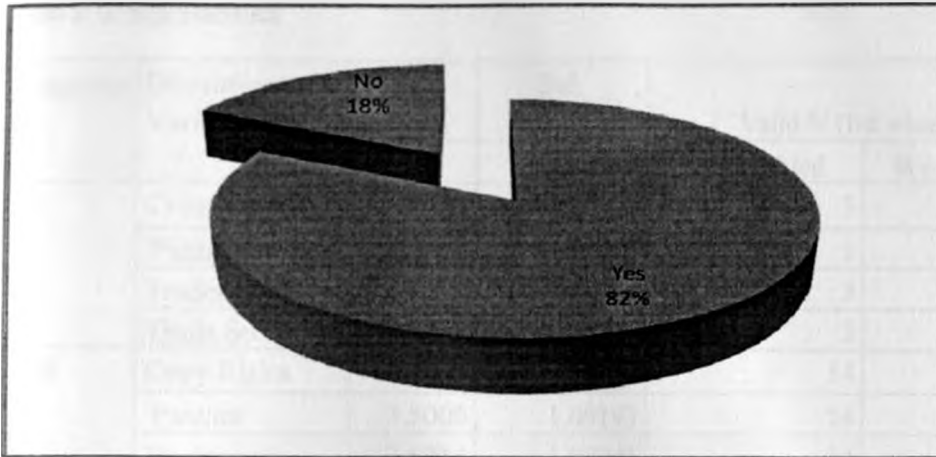
| Statements | Frequency | Percent |
|--|-----------|---------|
| It protect ones ideas from being stolen or exploited commercially | 17 | 100 |
| Allow the creator or owner to benefit from his or her own work or investment | 17 | 100 |
| Provides incentives to individuals by offering them recognition for their creativity and material reward for their market inventions | 15 | 89 |
| Attract foreign investors to invest locally in their products in the sense that counterfeit products are not entertained | 10 | 56 |

Source: Research 2012

4.3.4 Have You Ever Experienced Infringement Of Your Intellectual Property Rights?

The respondents were asked to state whether they have ever experienced infringement of your intellectual property rights. As shown in figure 4.2.3, 82% had experienced infringement of your intellectual property rights while the remaining 18% had not experienced infringement of your intellectual property rights. Of those who had experienced infringement of your intellectual property rights, 90% had experienced copying, 96% had experienced piracy, and 84% had experienced internet based infringements.

Figure 3: Have You Ever Experienced Infringement Of Your Intellectual Property Rights?



Source: Research 2012

4.4 Discriminant Analysis

This section covers Discriminant analysis. The tool of analysis was used to assist in discrimination of Multinational companies' on the basis of considering intellectual property rights when making investment decision in East Africa based on Copy Rights, Patents, Trademarks and Trade Secrets.

4.4.1 Descriptive Measures

As shown in table 4.4.1, the descriptive measures shows that there is clear difference in the mean values among the four Discriminant variables, that is, 17 Multinational companies' can be classified into two predetermined categories as one (1) for multinational firms whose decision to invest in east Africa were influence by intellectual property rights and zero (0) for multinational firms whose decision to invest in east Africa were not influence by intellectual property rights.

Table 4.1: Group Statistics

Table 5: Group Statistics

| Categories | Discriminant Variables | Mean | Std. Deviation | Valid N (list wise) | |
|------------|------------------------|--------|----------------|---------------------|----------|
| | | | | Unweighted | Weighted |
| .00 | Copy Rights | 2.0000 | 1.00000 | 3 | 3 |
| | Patents | 2.3333 | 1.52753 | 3 | 3 |
| | Trademarks | 3.0000 | .00000 | 3 | 3 |
| | Trade Secrets | 2.3333 | .57735 | 3 | 3 |
| 1.00 | Copy Rights | 4.1429 | .77033 | 14 | 14 |
| | Patents | 3.5000 | 1.09193 | 14 | 14 |
| | Trademarks | 3.5714 | 1.08941 | 14 | 14 |
| | Trade Secrets | 3.0714 | .82874 | 14 | 14 |

Source: Research 2012

4.4.2: Hypothesis Test

The Wilks lambda table was used to carry out hypothesis test as follows

H₀: there is no significance different between multinational firms whose decision to invest in east Africa were influence by intellectual property rights and multinational firms whose decision to invest in east Africa were not influence by intellectual property rights.

H_a: there is significance different between multinational firms whose decision to invest in east Africa were influence by intellectual property rights and multinational firms whose decision to invest in east Africa were not influence by intellectual property rights.

P-value = 0.043 < 0.005, there is enough evidence to support H_a. Hence there is significance different between multinational firms whose decision to invest in east Africa were influence by intellectual property rights and multinational firms whose decision to invest in east Africa were not influence by intellectual property rights

Table 4.4.2: Wilks' Lambda

Table 6: Wilks' Lambda

| Test of Function(s) | Wilks' Lambda | Chi-square | df | Sig. |
|---------------------|---------------|------------|----|------|
| 1 | .469 | 9.833 | 4 | .043 |

Source: Research 2012

4.4.3: Discriminant Function

Canonical Discriminant function coefficients was used to come up with the Discriminant function as follows

$$D.A = -2.094 + 1.032\text{Copy Rights} + 0.330\text{Patents} + 0.545\text{Trademarks} + 0.756\text{Trade Secrets}$$

Ranking of the Discriminant variables shows that the most important one is copy rights, followed by trade secrets, trademarks and patents respectively.

Table 7: Canonical Discriminant Function Coefficients

| | Function |
|---------------|----------|
| | 1 |
| Copy Rights | 1.032 |
| Patents | .330 |
| Trademarks | .545 |
| Trade Secrets | .756 |
| (Constant) | -2.094 |

Unstandardized coefficients

Source: Research 2012

4.4.4: Significance of the Model

The hit ratio of 94.1% shows that 94.1% of the cases (multinational firms) were correctly classified in their respective categories (one (1) for multinational firms whose decision to invest in east Africa were influence by intellectual property rights and zero (0) for multinational firms whose decision to invest in east Africa were not influence by

intellectual property rights). Just like the R^2 in multiple regression analysis, a hit ratio of 94.1% > 70% is an indication that the Discriminant function established above is significant and should be recommended for classification of multinational firms decision to invest in east Africa based on intellectual property rights.

Table 8: Classification Results

| | | Predicted Group Membership | | Total |
|-------|------|----------------------------|-------|-------|
| | | .00 | 1.00 | |
| Count | .00 | 2 | 1 | 3 |
| | 1.00 | 0 | 14 | 14 |
| % | .00 | 66.7 | 33.3 | 100.0 |
| | 1.00 | .0 | 100.0 | 100.0 |

94.1% of original grouped cases correctly classified.

Source: Research 2012

4.5: Means of Enforcement of IPR in the Industry

When asked to indicate ways upon which intellectual property rights could be promoted in their respective industries/country, the respondents were of the opinion that this could be done through ; national cooperation and coordination (coordinated one involving relevant stakeholders and dealing with all the varies IPRs), international cooperation (creation of bilateral cooperation and support programmes in the field of enforcement as well an international computer network used for exchange of information on infringement cases), public awareness and cooperation (creating national anti counterfeiting and anti piracy campaigns linking between IP, crime and job losses and the effect of organized crime and the dangers to health and safety of infringing goods), right holder cooperation (the right holders have the largest immediate financial stake in ensuring the protection of those rights, thus they are willing to assist in enforcement by

providing information to assist in the identification of infringing products and in cooperating in awareness and training programmes) and judicial enforcement (this includes provisional measures, damages, ancillary orders and evidentiary rules).

Other means were border controls (competent customs law that gives power to countries to check inward and outward means of transport and examine inward and outward goods and article), criminal procedures (article 61 of the TRIPS agreement requires criminal procedures and penalties for cases of willful trademark counterfeiting or copyright piracy on a commercial scale), right to information (it enables the right holder to identify the key agencies involve in infringing activities particularly in the countries involved), deterrent of publicity (provides protection for the public as well as raising awareness of the value of IPR . judicial authorities to order publication of court decisions that have deterrent effect), accelerated procedures (best practices that relieves the court congestions and reduces the procedures thereby improving the overall dispensation of justice to the right holder) and mediation and arbitrations (means of reducing the expense and bureaucratic delays in the enforcement process as an alternative dispute resolution procedures).

CHAPTER FIVE:

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Summary of Findings

This section gives a summary of the findings from the research. The researcher began by determining the reliability of the study. It was found that the response rate was 89.5%; this was considered to be good enough for the analysis. On demographic information the researcher first sought to know the gender of the respondents, the respondents were 88 % male and 12% female a sign of gender imbalance. Concerning number of years of service in the Organization, majority of the respondents have worked in their organization over 11years, thus there is high level of understanding of their organization.

The respondents unanimously indicated that they were all aware of the intellectual property rights enforcement. The results also indicated that majority of respondents firms had considered Intellectual Property Rights when making investment decision in East Africa. The key meaning of intellectual property rights were; protecting ones ideas from being stolen or exploited commercially, allowing the creator or owner to benefit from his or her own work or investment and providing incentives to individuals by offering them recognition for their creativity and material reward for their market inventions. The study



further found out that multinational firms had experienced infringement of intellectual property rights in the form of copying, piracy and internet based infringements.

The study used Discriminant analysis to discriminate multinational firms on the basis of considering intellectual property rights when making investment decision in East Africa based on Copy Rights, Patents, Trademarks and Trade Secrets.

Discriminant model was developed and then tested for accuracy in obtaining predictions. One major finding of the study is that all the discriminate variables were significant in the model (clear difference of the mean values between the two categories). The study further demonstrated that the two groups were heterogeneous, that is, Copy Rights, Patents, Trademarks and Trade Secrets could be used to group multinational firms as either having considered intellectual property rights when making investment decision in East Africa or not. This is demonstrated by the hit rate of 94.1% (percentage of correctly classified cases). The usage of the model developed for discrimination is therefore recommended for use since it will classify 94.1% of the cases correctly.

The respondents were of the opinion that promotion of intellectual property rights could be done through; national cooperation and coordination, international cooperation, public awareness and cooperation, right holder cooperation, judicial enforcement, border controls, criminal procedures, right to information, deterrent of publicity, accelerated procedures and mediation and arbitrations.

5.2 Conclusion

The study concluded that majority of MNCs investing in East Africa considered IPR when making investment decisions based on copyrights, patents, trademarks and trade

secrets. This supported by the respondents' rating of the variables in terms of those who considered IPR versus those who did not consider. The study also concluded that IPR means protecting one's ideas from being stolen or exploited commercially as well as allowing the creator or owner to benefit from his or her own work or investment within the east African context.

Further the study concluded that IPR could be enforced within the East Africa region through national cooperation and coordination, international cooperation, public awareness and cooperation, right holder cooperation , judicial enforcement, border controls, criminal procedures, right to information, deterrent of publicity, accelerated procedures and mediation and arbitrations.

5.3 Recommendations:

5.3.1 Recommendations to Policy Makers

In the views of the research findings, it is recommended that proper enforcement of IPR be put in place in the East African region in order to spur MNC investments since majority consider IPR when investing. At the same time it is important to understand the rationale behind some MNC not considering the same when investing.

5.3.2 Suggestion for Further Research

The study was confined to MNC within East Africa region. This research therefore should be replicated to cover other investors such as TNC, emerging MNC from developing countries, foreign governments, newly developed countries and other emerging trading blocks.

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APPENDICES:

Appendix I: Letter of Introduction

Kennedy Mong'are Mogaka,
P. O. Box 58954-00200,
NAIROBI.

Dear Sir/Madam,

RE: COLLECTION OF DATA

I am a postgraduate student at the University of Nairobi, School of Business. As part of my course work assessment. I am required to submit a management research project. In this regard, am undertaking a research on the influence of intellectual property rights enforcement on multinational company's decision to invest in East Africa

This is to kindly request you to assist me collect the data from your organization on the same. The information you provide will be used exclusively for academic purposes.

My Supervisor and I assure you that the information you give will be treated with strict confidence. A copy of the final paper will be availed to you upon request.

Your assistance will be highly appreciated.

Thank you in advance.

Yours sincerely,

Kennedy Mong'are Mogaka

MBA Student

Dr. John Yabs

Supervisor

Appendix II: Questionnaire

This questionnaire is to get general information about the influence of intellectual property right on multinationals decision to invest in the East Africa region. The information given will be kept confidential. (Tick the right answer and write where necessary).

Section A: - Personal and Organization Profile

1. Name of organization (optional).....

2. Gender

Male

Female

4. Academic qualifications

Secondary Graduate Masters PhD

5. How long have you worked in the organization?

0-5 to 10years 11 to15 years 16 to 20 years Over 20 years

6. How many years have you worked in your current department?

Less than 2 years 4to 6 years 7to 9 years Over 10 years

Section B: Awareness of Intellectual Property Rights Enforcement

7. Are you aware of the intellectual property rights enforcement? Yes No

8. Did your organization consider Intellectual Property Rights when making investment decision in East Africa? Yes No

9. Which of the following statement is correct about Intellectual Property Rights in East Africa? (Tick as applicable)

It protect ones ideas from being stolen or exploited commercially

Allow the creator or owner to benefit from his or her own work or investment

Provides incentives to individuals by offering them recognition for their creativity and material reward for their market inventions

Attract foreign investors to invest locally in their products in the sense that counterfeit products are not entertained

10. Have you ever experienced infringement of your Intellectual Property rights?

Yes No

11. If yes which of the following form of infringement have you experienced?

Copying

Adaptation

Piracy

Internet based

Producer based

Section C: Influence of Intellectual Property Rights Enforcement on Multinational Companies Decision to Invest In East Africa

12. Please indicate, by scoring in the 1-5 point scale, the extent to which the following intellectual property rights influenced your decision to invest in East Africa. Use the following key:

5 - Very Great extent, 4 – Great extent, 3 - Moderate extent, 2 - Small extent, 1 - Not at all

| Intellectual property rights | | <i>Very Great</i> | <i>Great extent</i> | <i>Moderate</i> | <i>Small extent</i> | <i>Not at all</i> |
|------------------------------|---------------|-------------------|---------------------|-----------------|---------------------|-------------------|
| | | 5 | 4 | 3 | 2 | 1 |
| (i) | Copy Rights | | | | | |
| (ii) | Patents | | | | | |
| (iii) | Trademarks | | | | | |
| (iv) | Trade Secrets | | | | | |

13. What other Intellectual property rights not mentioned above influences your operations in East Africa?

.....

.....

.....

14. Cases have been known where multinational corporations close down as a result of infringement of their works. Have you experienced the same?

Yes No

15. If yes how did it happen?

.....

.....

.....

16. What in your view can promote the enforcement of intellectual property rights in your industry and country of operation?

.....

.....

.....

Thank you for participating in completing this questionnaire

Appendix III: List of Companies

1. Bata Shoe Company
2. British American Tobacco
3. Cadbury East Africa
4. Colgate Palmolive
5. East Africa Breweries
6. East African Portland Cement
7. Eltek Kenya Limited
8. General Electric
9. General Motors
10. GlaxoSmithKline Limited
11. Heineken N.V
12. Johnson & Johnson
13. Nestle Kenya
14. Nokia
15. Procter & Gamble
16. Reckitt Benckiser
17. Sage Group
18. Toyota East Africa
19. Weetabix East Africa Limited