

Presentation to the Portfolio Committee on Trade and Industry

*Public Hearings on the Intellectual
Property Laws Amendment Bill*

19 October 2010

We should like to cover ...

- A brief background on SAMRO
- Our support and commitment to the protection of Traditional / Indigenous Knowledge (TK / IK)
- Our proposal on the protection of TK / IK

We should like to cover ...

- Our concerns regarding IPLAB
- Our request to the Portfolio Committee

About SAMRO

A brief introduction

The full name is ...

Southern African **Music Rights** Organisation,

Limited (by Guarantee)

Rights i.t.o Copyright legislation
Section 2(1)(b) of Copyright Act 98 of 1978

It is ...



- described as a Collective Management Organisation (CMO) or simply a collecting society
- a company without share capital and shareholders
- membership based
 - +10, 000 South African songwriters and music publishers

It is ...



- affiliated to the International Confederation of Societies of Authors and Composers (CISAC)
 - Headquartered in Paris
 - Representing some 220 societies in 190 countries
 - SAMRO is on the 20 member Board of Directors and the CEO serves as vice-chairperson of the Board
 - Other SAMRO Executive serve on various committees of CISAC

It has ...

- entered into 134 bilateral agreements of reciprocal representation with other international societies in 159 territories
 - Represents + 1.4 million songwriters throughout the world
 - Administers some 1.8 million active musical works on an annual basis



The bundles of Rights administered by SAMRO

In terms of Copyright Act 98 of 1978 Section 2 (1) (b) and (e)



The core function of SAMRO is ...

- to license the use of music ...

- for broadcast
- performance in public
- transmission through a diffusion service
- reproduction

Performing Rights

Mechanical Rights

- to remit / pay royalties to ...

- songwriters (composers and lyricists)
- music publishers
- other similar organisations throughout the world



The basis for doing this is derived from ...



- The Copyright Act 98 of 1978 as amended
- Performers Protection Act of 1967 as amended
- A voluntary Deed of Assignment
- Bilateral agreements of reciprocal representation
- Licence agreements with users of music



Our support and commitment to the protection of TK / IK

A long held view



- The protection of TK / IK is critical to ...
 - the economic success of any developmental state
 - the dignity of communities
 - the promotion of cultural diversity
 - the ethical advancement of knowledge, science and research

A long held view



- Presented and defended the need to TK protection at the ICC conference hosted by WIPO in 2004.
- Full and economically viable protection of TK / IK is long overdue



Our proposal on the protection of TK / IK

sui generis Legislation

- A law of its own kind
- Custom made to the needs and nuances of TK / IK
- Comprehensively covering all aspects of TK / IK use by others
 - for example:
 - Term of protection
 - Benefit sharing
 - Databases



Rationale



- Benefits of customisation
- Good law principle
 - No negative impact on existing laws
 - Consider the Regulatory Impact Analysis (RIA)
 - Implementable

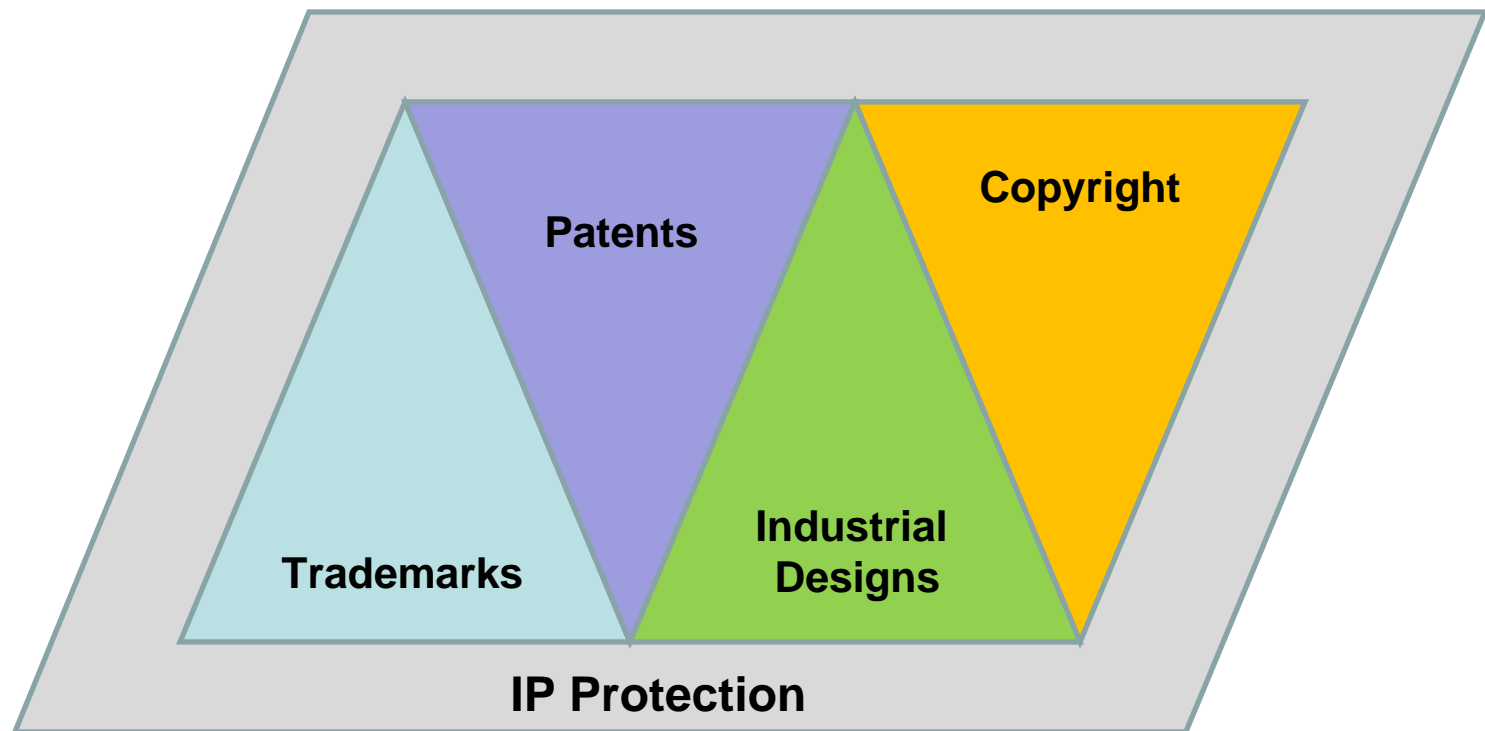
Rationale

- Can offer true protection as opposed to “make believe” protection
- Consistent with international best practice
 - Current WIPO discussions
 - Consider the Africa group recommendations
 - Recent legislative reforms in India
 - Position of the African Regional Intellectual Property Organisation (ARIPO)



The logic

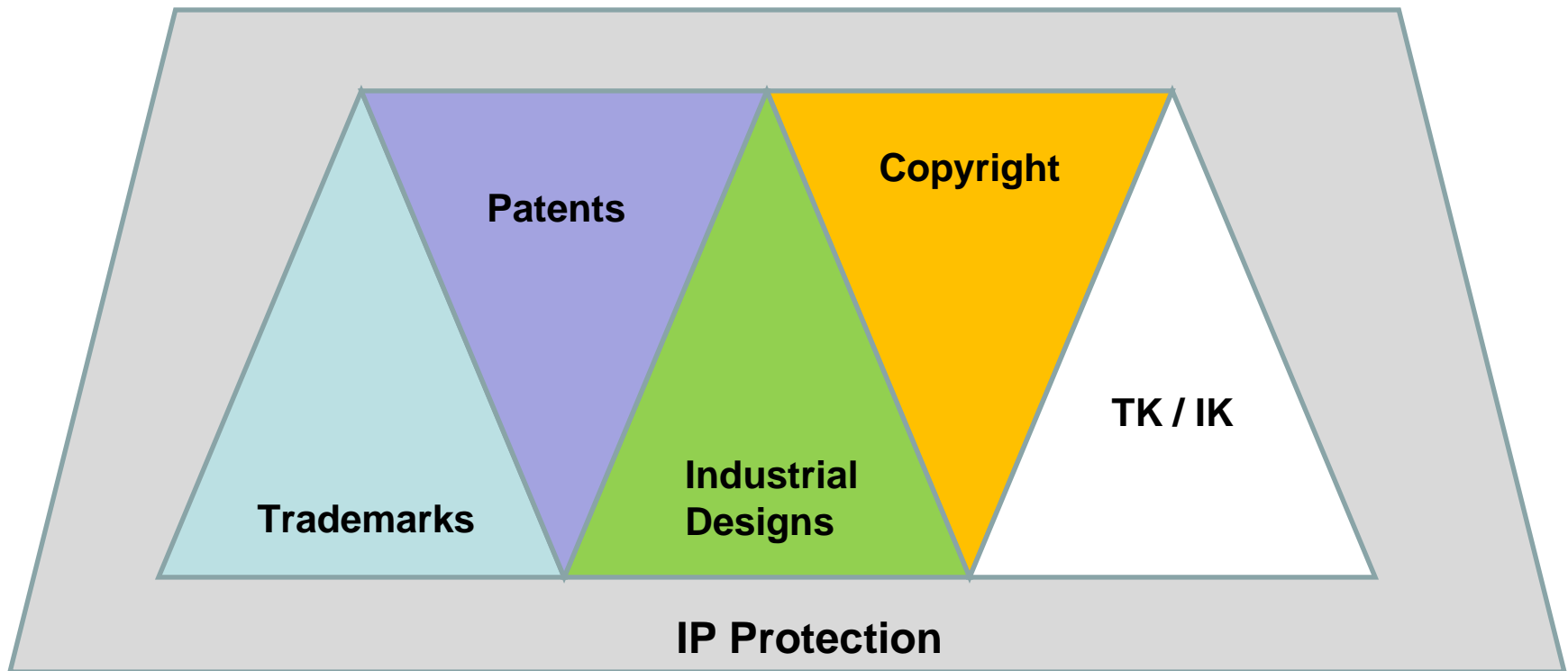
IP System in SA ...



... is made up of bundles of *sui generis* legislation

The logic

Proposed IP System inclusive of protection of TK / IK ...



... Made up of bundles of *sui generis* legislation

Benefits



- Continued global promotion of South Africa culture

– Examples:

- Ladysmith Black Mambazo
- Johnny Clegg
- Mzilikazi Khumalo's operas
 - Princess Magogo
 - uShaka
- Thandiswa Mazwai



Benefits



- Legislative clarity
 - Accountability
 - Appropriate Institutions
- Minimum / orderly interruption in the operational aspects of existing institutions
 - Licensing
 - Databases



Our concerns with the IPLAB

Key concerns

- Consultation process
 - NEDLAC
 - Stakeholder meetings
 - Regulatory Impact Assessment (RIA)
- Drafting challenges
 - Definitions
 - “force-fit” approach
 - E.g. Regulation of CMOs
 - Inconsistencies
 - Introduction of Communication to the Public Right



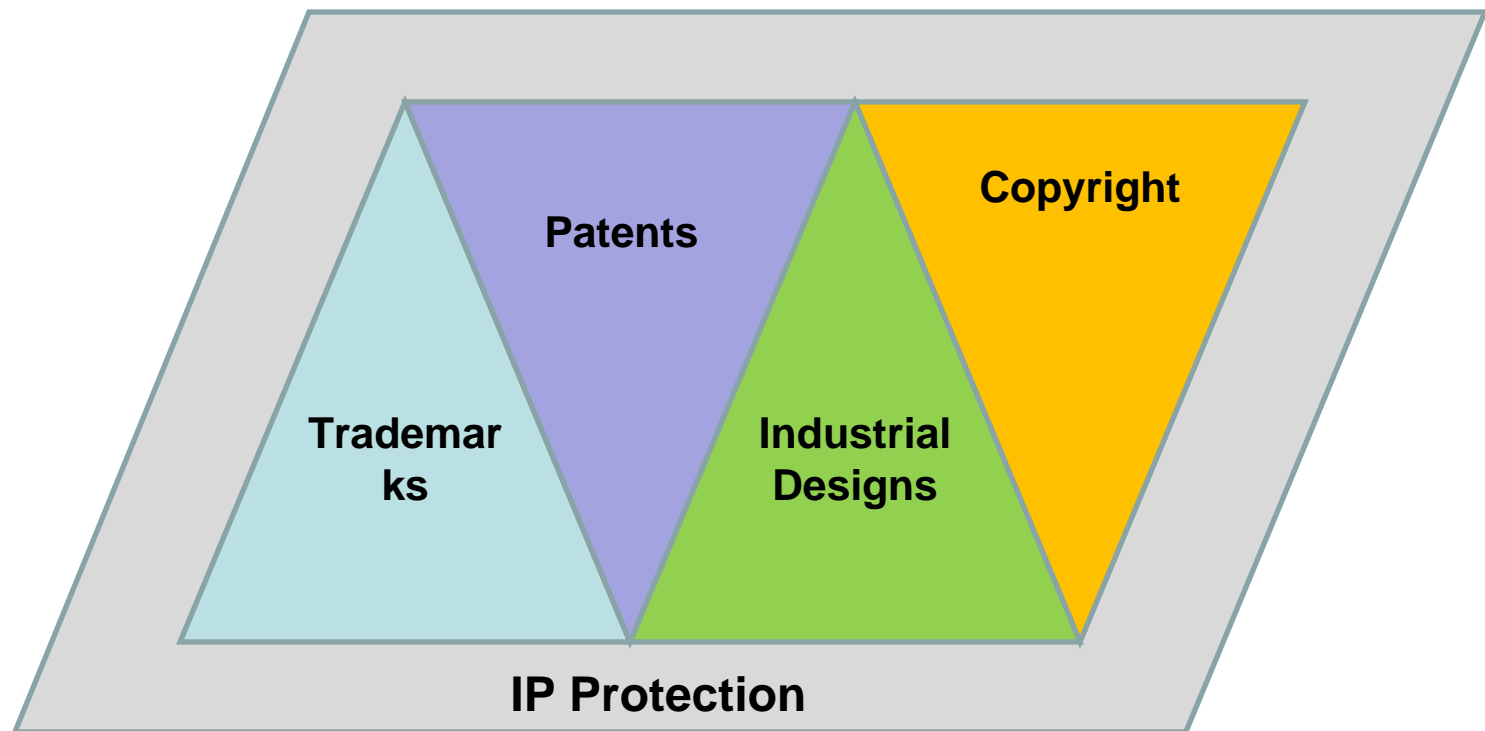
Key concerns



- Principle / policy challenges
 - Nature of copyright
 - Requirements for copyright to subsist
 - Term of copyright
- Practical challenges
 - Market confusion
 - International practice misalignment
 - Licensing impracticalities

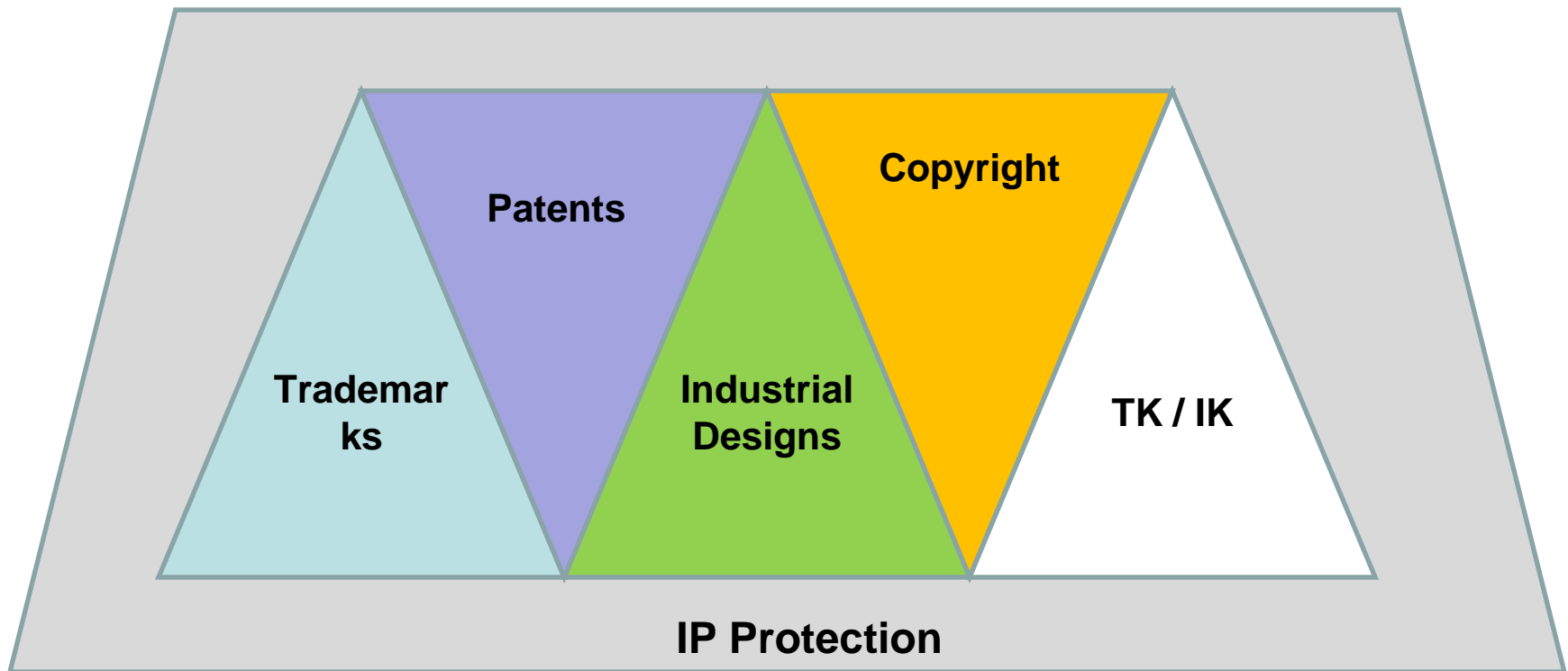
The logical problem

The current situation



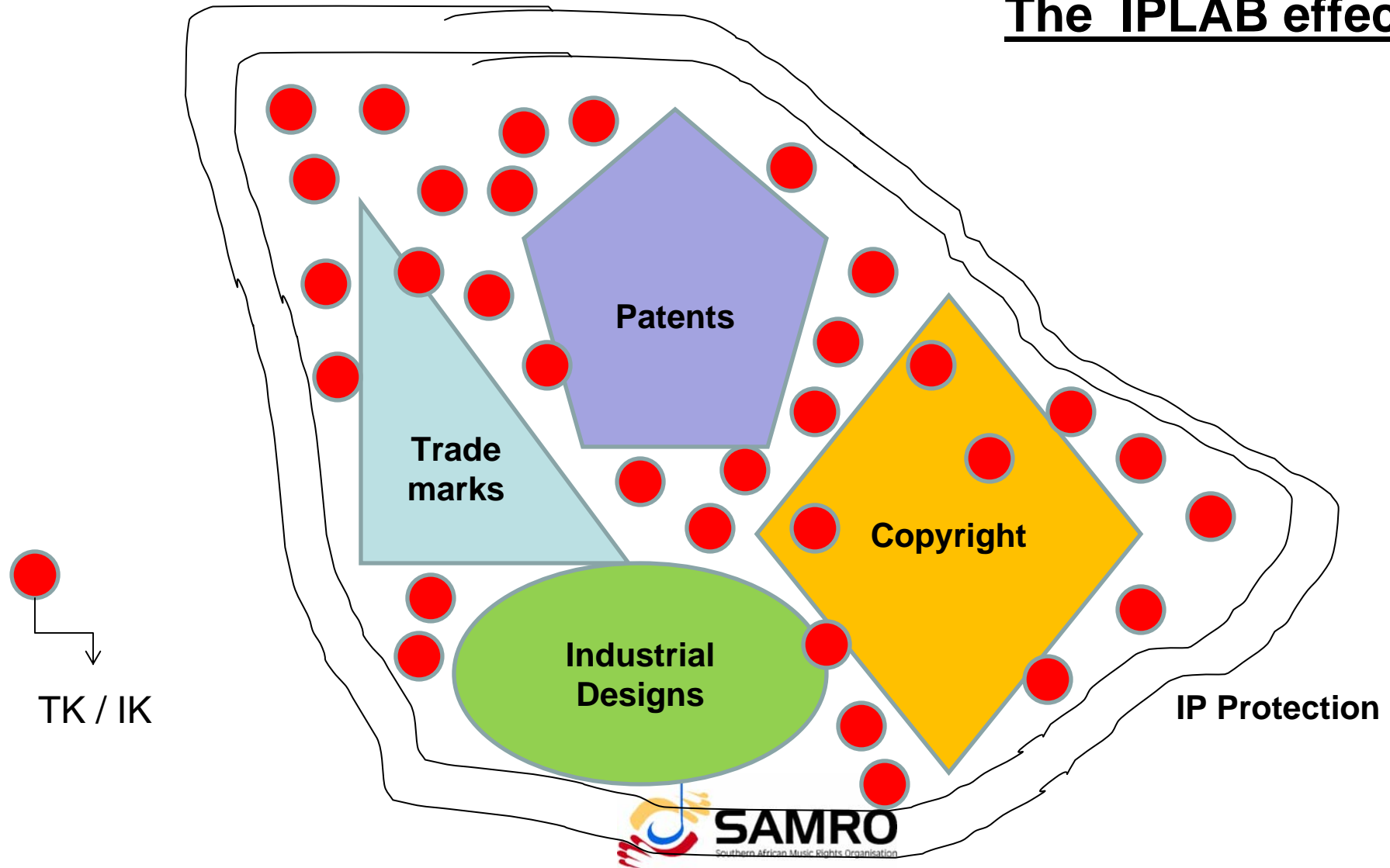
The logical problem

As proposed by Cultural Industries



The logical problem

The IPLAB effect





Unintended Consequences



- Nationalisation / Expropriation of IP
- Stifling of cultural and art promotion and development
- Deprivation of income to legitimate rights holders
- Gridlock



Unintended Consequences



- Devaluation of the value of copyright
- No protection for TK / IK reliant communities
- Ongoing litigation
- Negative impact on the economy as a whole



Our request to the Portfolio Committee

We respectfully ask the Committee to ...

- Mandate / instruct the DTI to draft a *sui generis* legislation with time lines
- In doing so to **consult** with all relevant stakeholders
- Take into consideration other appropriate global initiatives to address this including the WIPO discussions
- Recommend a *sui generis* Bill to Parliament



THANK YOU