

**the dti**Department:  
Trade and Industry  
REPUBLIC OF SOUTH AFRICA

Issues - continued

Hereditary and Derivative TIP, e.g. trademarks, copyright, patents, designs and performances.

**Comment:**

Concerned that hereditary and derivative TIP may not be distinguishable from each other.

**Response:**

In IP as long as it can be proven that something "new" has been created from the existing IP such as copyright or patents, courts have held that copyright/patent can be granted on the "new". A patent of "addition" and an "incremental" work done on the data compilation can be treated as a "new" or "original" work. In the same vein a "derivative work" should pass the test to be regarded as "new". Contemporary music based on folklore can easily qualify to claim its "originality" in copyright or "newness" can be claimed in the case of patent based on the "old" patent. By extension this apply to trade marks and design. Von Braun, Ntuli and Shabangu seem to be agreeing with this principles but seem to be too cautious. Their fear is baseless in IP law. See the attached article by Rimmer and WIPO Booklet. The distinction advanced above apply to all domains of IP. What SAIPL submitted is not helping the course. Drafters should stick to these policy principles and differentiate between Derivative/Hereditary IP and clearly indicate that Derivative may consist of both aesthetic and functional design. The creation of class "T" which is now, "Design" derived from "Hereditary IP" can accordingly be attended to.

Public Domain and Public Availability arguments do not deserve comments as policy issues are closed.

WORLD INTELLECTUAL PROPERTY  
ORGANIZATION

世界知识产权组织

ORGANIZACIÓN MUNDIAL  
DE LA PROPIEDAD INTELECTUAL



ORGANISATION MONDIALE  
DE LA PROPRIÉTÉ INTELLECTUELLE

المنظمة العالمية للملكية الفكرية

ВСЕМИРНАЯ ОРГАНИЗАЦИЯ  
ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ

The International Bureau of the World Intellectual Property Organization (WIPO) presents its compliments to the Permanent Mission of South Africa to the United Nations Office at Geneva and other International Organizations in Switzerland and has the honor to send herewith the Draft Comments of WIPO on the *"Policy Framework for the Protection of Indigenous Traditional Knowledge through the Intellectual Property System and the Intellectual Property Laws Amendment Bill, 2008"* as published in Government Gazette No. 31026, of May 5, 2008, for its onward transmission to the relevant authorities in South Africa.

This is in response to the request received from Mr. Macdonald Netshitenzhe, Director, Commercial Law and Policy, Department of Trade and Industry.

A handwritten signature in dark ink, appearing to be 'Re' or similar, is written below the typed name.

October 1, 2009