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PHISHING ATTACKS
OF THE MODERN AGE?

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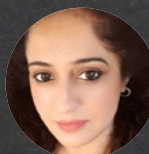


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YOUR WITNESS PLEASE!

International Regime of IP Law and its Importance in Trade

■ Sudeep Chatterjee & Ipshita Dutta



Intellectual property is the mind's efforts, for instance, advancements, conceptual and stunning works; structures; and pictures, names,

and pictures used in exchange. It can take a literary work, art, industrial design, pharma creations, new drugs, geographical locator, a typical regional culture or practice, etc.

IP is guaranteed in law by licenses, copyrights, and trademarks, which enable people to win appreciation or cash benefits by what they plan or make. The IP system intends to develop a space wherein ingenuity and advancement flourish side-by-side. Protection of recognised innovation security is done by permitting the makers the sole right to handle their improvement, which entails dismissing others from the use of their creations. Along these lines, it is unquestionably not difficult to perceive any inspiration driving why approved improvement rights (IPR) would have a brief and significant effect on industry and exchange – the proprietor of an IPR may – while practicing his/her right – obstruct the storing up, use or space of a thing which joins the IPR.

Innumerable developments over the last couple of years can be credited to a constant intermingling of authorized development rights with worldwide trade. Moreover, the snappy addition can see in peripheral cross exchanges of product, organizations, and capital.

WIPO defines Copyright as 'a legal term used to describe creators' rights over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.' and 'A patent is an exclusive right granted for an invention. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document.' and 'trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises.' Today, trade and commerce in any commodity take place on a global platform. Intellectual property is no exception to this. Therefore before looking at intellectual property and trade, we must first understand the legal regime that governs intellectual property and its protection.



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The Berne Convention was set up after the Paris Convention. Copyright protection on the universal level started around the mid-nineteenth century based on reciprocity. The requirement for a uniform framework prompted the definition and reception on September 9, 1886, of the Berne Convention for the Protection of Literary and Artistic Works¹. It is the most used arrangement in the field and is available to all States. Instruments of ratification and accession are saved with the Director-General of WIPO. The Berne Convention has been overhauled a few times to adapt to the worldwide diversity of protection that the Convention gives. The principal significant amendment occurred in Berlin in 1908, and this was trailed by the corrections in Rome in 1928, in Brussels in 1948, in Stockholm in 1967, and in Paris in 1971.

The Convention lays down three fundamental standards: national treatment, automatic protection, and independence of protection. The rule of “national treatment” states that works starting in one State are to be given similar assurance in every party State as these are awarded to works of their own nationals. Furthermore, there is programmed insurance by which such national treatment isn’t reliant on any convention.

World Intellectual Property Organisation is an agency of the UN consisting of 192 members and is the forum of all IP services - policy, information and cooperation. Article 3 spells out its objectives as to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization and to



ensure administrative cooperation among the Unions².

TRIPS Agreement³ was set up in 1995, TRIPS Agreement is the most comprehensive multilateral Agreement on Intellectual Property matters covering copyright, trademarks, geographical indications, industrial designs, patents and undisclosed information like trade secrets and test data. Its main features are - spelling out global standards, enforcement and dispute settlement. Countries that are members of the World Trade Organization essentially adhere to the General Agreement on Trade and Tariffs and, therefore, to the Agreement on Trade-Related Aspects of Intellectual Property Rights, otherwise called the TRIPS Agreement. The TRIPS Agreement expects members of the WTO to have laws promulgated to give substantive arrangements to the acknowledgment of IP rights, specifically in regard of

copyright and related rights and their protection.

The Agreement contains provisions to protect innovation. Nations that are signatories to the Agreement must attempt to actualize these measures and in certainty, can give more security than is recommended.

Over the past 2 – 3 decades, many trade agreements – bilateral, regional, and multilateral- have been signed. Most have intellectual property rights clauses in them. In this era of globalization, intellectual properties are commodities traded across boundaries and hence need ownership rights and protection. Intellectual property rights are critical to the aggressive development strategies of the different post-modern economies. The TRIPS Agreement just prompted an overall concurrence on the cross between intellectual property and exchange.



Security and acknowledgment of these rights are fundamental to numerous worldwide enterprises. These include research-based pharmaceuticals, whose work and capacity to add to the wisdom of mankind rely on R&D. While most developed countries already have in place intellectual property laws for the protection of IPR, some developing countries are still lagging. With TRIPS and other regional and multilateral agreements with IP clauses, many countries have put their IP laws in place. In many developing countries like India, local innovators and companies need their innovations and inventions protected from poaching by other vested interests⁴. This also includes the protection of ancient cultural traditions and practices like yoga.

The relationship between IPR and international trade is quite significant.

Governments working on trade policy in all cases take IPR into account⁵. This increasing trade has led to the emergence of a virtual global market comprising almost all countries and surviving on a robust trade system and friendly trade relations between nations built on the bedrock of trade agreements. For natural reasons, businesses are eager to tap into this market, which has become highly competitive. For businesses to survive in this cutthroat environment, an extremely strong domestic and international regime to protect all kinds of intellectual property becomes essential.

A European company⁶ selling advanced knitting machinery to manufacturers in China discovered that a local competitor was selling a competing product not under the company's European trademark. The dimensions, exterior covering, colors of the product were the

same. This local product copied even the brochures and website photos of the original product. Apart from this, even the product specifications of the original product were given even though the local product did not meet those specifications. As an obvious result of this, the customers were misled. However, the company did not have any patents registered in China. It could only rely on claims of copyright infringement on their brochure artwork and infringement of the Anti-Unfair Competition Law about the false claims on the brochure. The company then engaged a local law firm to send a warning letter to the competitor, who led the competitor to change the photographs and some brochure contents. The company was left with no legal basis to force them to change the appearance of their product.⁷

Therefore, we can clearly see that the importance of intellectual property when it comes to trade cannot be undermined.


Patents are incentives for stronger efforts for R&D as the patent holder knows he can benefit for his innovation⁸. IP rights allow for acknowledgment of his efforts in terms of payments, appreciation, or across boundaries, globally. Similarly, for trademarks, copyrights, industrial designs etc⁹. They have been recognised by nearly every country with laws protecting them. Most trade agreements have IPR clauses in them and laws are being made in every country to be in line with these agreements. There have been some arguments about innovations and inventions, especially for pharmaceutical products, being the common knowledge of entire mankind and to be made available to every person and not limited to only those who can afford to pay for them. Hence there is the argument



for generic medicines. But there is no denying that patents, copyrights, etc. recognise the creator's efforts and this needs to be protected¹⁰. Given all this, a few things could be done to ensure a better balance between intellectual property and international trade.

The provision of TRIPS, as yet, cannot face the present-day challenges facing intellectual property and international trade. This is most apparent in the enforcement procedures in the TRIPS. This is not rigorous, and most member countries are free to adapt as per their local laws. Some countries may have stringent ones; other states may have lenient laws that fail to deter IPR

infringement. So, the need of the hour is to have stronger and uniform laws and penalties and a mechanism to enforce them. While one understands that this is easier said than done, efforts must be on towards that goal.

Undoubtedly, TRIPS Agreement is a beginning; efforts must be on for more debate and discussion to build a consensus on understanding the various facets of IPR and the problems and solutions in this area¹¹. Therefore, with the help of a few improvements, the law dealing with intellectual property and International trade could better protect the rights of the inventors. 



Sudeep Chatterjee is a Partner at Singh & Singh Law Firm LLP. He has handled various high-profile cases in the field of Copyright, Trademarks, Data Protection, Anti Counterfeiting and UDRP. He was a part of the Parliamentary Standing Committee which was constituted to look into the Copyright Amendment Bill, 2010. He advises the DPIIT on Copyright related issues and is also on their panel. Since 2008, he has been a part of the INTA Committees - Trademarks Committee, the Non-traditional Marks Committee, and the Copyright Committee. Currently, he is a Member of INTA Enforcement Committee (2021 – 2023). He is also a member of the IP Committee of CII (Confederation of Indian Industry) and the India Working Group on Intellectual Property of ICC (International Chambers of Commerce). He is also the President of The Asian Patent Attorneys Association (APAA - Indian Group)



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¹BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS (Paris Text 1971), Article (2) of the Act

²Official website, Wipo, World Intellectual Property Organization.

³Campi, Mercedes & Dueeas, Marco. (2017). Intellectual Property Rights, Trade Agreements, and International Trade. SSRN Electronic Journal.

⁴John M. Curtis, Intellectual Property Rights and International Trade: An Overview, (2012).

⁵Gerald J. Mossinghoff, The Importance of Intellectual Property Protection in International Trade, 7 B.C. Int'l & Comp. L. Rev. 235 (1984).

⁶Mridula Dalvi, India: International Regime Of Intellectual Property Laws And Its Importance In Trade, (2019).

⁷Global Patent Filing/blog/international-regime-intellectual-property-laws.

⁸Gangandeeep Raizada & Sharanjit Singh Dhillon, Impact of Intellectual Property Rights on International Trade: Evidence from India, (2017).

⁹Christopher M. Kalanjje, Role of Intellectual Property in Innovation and New Product Development.

¹⁰Kenneth W. Dam, The International Lawyer, Vol. 21, No. 3 (Summer 1987), pp. 627-638 Published: American Bar Association, (2017).

¹¹Mridula Dalvi, India: International Regime Of Intellectual Property Laws And Its Importance In Trade, (2019).