

Intellectual Property Rights (IPR) from a Meta-Practical Approach of Information Flow

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Abstract:

The dissolution of barriers as an aftermath of globalization has led to a magnanimous rise of information exchange leading jeopardy of ownership rights. Liberalization and globalization have unexpectedly and excitingly altered perceptions about science and its practice in most of the developing countries of the world. Multinational companies, hardly known for moderation and thoughtfulness, especially when commercial interests are involved, have set out to fence vast areas of science under the guise of protecting intellectual property. The information flow from one country to another is now a matter of seconds. The digital world is created in a virtual sphere where it becomes difficult to monitor the ethical conduit of information flow. A few potent questions may arise here as 'who or which is the source of information'? Is the medium a primary or secondary source? Are credits ethically attributed to the initiator of knowledge?

The present paper looks at IPR from meta-practical approach of information flow. It investigates through different literature review about policies and practices of IPR in different countries. Using the case-study basis, the paper attempts to understand the complexities of IPR particularly in developing countries of South Asia and South Africa. Each country has its own protection framework which may be weaker in comparison to developed countries of the world. The countries may be subjected to "invisible hand" which curbs its powers of IPR. The endless discussions on protecting IPR cover a troubling question: Can there be a great body 'intellectual property' being generated that merits protection? Many discussions came across on protecting 'ancient knowledge' as well as 'indigenous resources' that often lie unused. Moreover many agreements have run into rough weather over potential IPR clauses. Basically the purpose of libraries and information centers is to ensure free flow of information, recreation and enlightenment to users. A library manager, should in fact be, an opener of blocked pathways and over-all a leader in keeping the human mind free.

The present paper encompasses IPR in general and concentrates on the monopoly of information flow and the power politics in different countries. The findings of the paper would analyze the trends that are emerging in information flow which would ultimately be affecting the academic world and various forms of libraries in different parts of the world.

Keywords : Intellectual property rights, globalization, libraries, policy, governance, information, knowledge, political-economy, power, ownership, LIS professionals

Introduction:

The concept of Intellectual Property Rights (hereafter, IPR) has always been a topic of debate and controversy. The reason for this is the intangible and vague nature of the involving a lot of international regimes. When IPR is broken into parts, each term of it constitutes a separate meaning. The right has a legal component attached to

it where an individual or groups acquire certain “ordered liberty” by virtue of its existence declared through the court of law. The word property is linked with ownership of goods and hence the commoditization component is attached to it. Intellectual is related to the originality of idea generation and thus intellectual property refers to commoditized ideation under an ownership. However, when the question of measurement arises, as to how much of right should be exercised and whether intellectual property should have a right attached to it, the concept becomes problematic. The problem stems from the aspect of control and governance of countries through their political positions across the world. The question of which should be “property” and which should be “freely available” becomes zones of contestation.

Origin, growth, myth and reality of IPR:

IPR process includes the creation, ownership, control and diffusion of information both nationally and internationally. National policy governed by international policy creates strength for IPR. However, customization of IPR for every country is required to adjust with the infrastructure and societal needs of the country. Information accessibility, in the purview of IPR, has always been a double edged sword. On one hand, due to diffusion of advanced technological infrastructure, there has been easy availability of information and information products. On the other hand, it has created scope for piracy and duplication.

It is interesting to note that the major forums governing the IPR policies are the American and European nations. However, they have different names through which they operate. The responsibility not only wrests with WIPO but also with organizations like WTO, various human rights bodies (e.g. ECOSOC and CHR), the World Health Organization (WHO), several bilateral free trade agreements (FTAs), the UN Industrial Development Organization (UNIDO), the Convention on Biodiversity (CBD) and even UNESCO. In other words, regimes not previously concerned with intellectual property are now overlapping with each other in this issue-area. The US, from Punta Del Este in September 1986 to Geneva conventions in April 1989, has been pestering the developing nations of the world to confine the IPR policies within the ambit of GATT, WIPO and TRIPS. According to Lopez (1997), “Copyright law is an internationally recognized form of intellectual property protection for original works.” To tighten the loose ends, the EU in 1996 created what is known as ‘Database Directive’ aimed to “put in place a consistent, secure and stable legal regime necessary for database creators to compete on equal terms with their leading rivals in the world information market.” With the commencement of internet and global electronic commerce as information dissipation channels, the need for full

and equal protection gained importance. This led to discussion and formulation of new clauses in the IPR policy at WIPO conference in 1996. However, the problem of using too many stringent protective measures is to hinder the access and dissipation of information. Thus a balance needs to be created between the creator and the user of information. According to Lopez (1997), “further copyright protection must establish a better balance among all legitimate stakeholders including librarians, academics, scientists, government and the general public.” IPR policies

need to be shaped in such a way so that hindrances to accessibility and dissemination of information are obliterated, creating an inclusive knowledge society bereft of “unfreedom” to the “generation of new knowledge”.

The term IPR involves a whole lot of issues like copyrights, patents, trade secrets and trademarks, industrial designs have become a part of it.(Muzaka, 2010) Two interesting things have happened since the inception of this term post 1800. Firstly, this term has commoditized knowledge into property. Secondly, it has transformed the privilege and entitlement of the creator into rights. Both of these modifications have helped the powerful countries of the world to govern and manipulate knowledge to their own advantage. While the

constructed reality involves the ethical acknowledgment of the knowledge owners, the political trends have shown it to be a myth. The reality lies in the control and ownership of knowledge by powerful countries of the world. According to various scholars, “Given their nature, IPRs are better seen as the tools through which scarcity is actually created where none existed before, so as to enable the commoditization and appropriation of intangible goods from the commons into private hands” (Hughes, 1997; Kinsella, 2001). However, there always remain a threat that stringent IPR rules stifle advancement, innovation and the fluidity of information flow. Historical trends have shown that the justification of using IPR has not been constant over the years. Whereas anti-trust notion against IPR took place during World War II when US wanted to promote US-styled transnational corporation in home and abroad to defeat competition, the same anti-trust notion against IPR was not supported when developing countries’ demanded for establishing New Information and Communication Order. In this case, IPR was supported as establishment of New Information and Communication Order was thought to be derogatory to the interest of the developed countries.

A critical understanding of IPR shows deep rooted political economy at play. The developed countries of the world manipulate the definitions of IPR based on their economic power to dominate the developing countries of the world. Most developing countries have their own IPR but overwhelming them are IPR rules being laid down by the developed nations through the creation of international organization. In the international flow of information, the monopoly of political power and the monopoly of intellectual power may be same or different. If it is same, then the status quo is maintained and IPR is supported. If it is different, then IPR becomes projected as an anti-globalization tool and a hindrance to free flow of information. The constructions of scarcity of knowledge like any other commodity and hence the need to legalize and regulate has created a myth about accumulation and preservation. In reality, intellectual goods considered as property, are non-rivalrous and hence non-exhaustible.

Research suggests that the flow of FDI into a country is directly related to the strength of IPR policy in a particular country. (QUI, 2004) Such findings are consistent with Lee and Mansfield (1996), who perform the analysis using FDI data for all manufacturing industries from 1990-1992 for 14 developing countries. When they pool their data, they find that the volume of U.S. FDI increases with the strength of intellectual property protection. The findings are also consistent with Maskus (1998), who finds that FDI is sensitive to intellectual property protection in developing countries. It would be thus, be important at this junction to understand the power politics of information flow from the case studies of would be developing countries like South Africa and the developing countries of South-East & South Asia.

Case1: South Africa:

The rural belt of South Africa suffers from deficiency of the accessibility of Information and Communication Technology (ICT) due to lack of infrastructure, illiteracy and general underdevelopment. (Nulens et al. 2001) Apart from these issues, this part of South Africa suffers from the perils of IPR due to two reasons. Firstly the monopolization and protection of rights implemented by the multinationals have caused inaccessibility and high cost of computer software. Secondly, a lot of reading materials on the internet are available only by paying a fee which becomes unaffordable to a large segment of society. The few multinationals of the world monopolize the information market. Hence, they control the price and accessibility of information medium and content. The argument put forward by the proponents of IPR is that IPR has a definite correlation to poverty reduction and the creation of overall development. (Maskus 2002; Saggi 2002). However, according to Chiumbu (2006), “In reality, however, the design of intellectual property rights has not taken into consideration the different levels of development of many African countries, since the intellectual property right regime confers the same intellectual property standards on all countries regardless of level and scope of development”. Peter Drahos (2007) was of the opinion, “the reality of standard-setting for developing countries is that they

operate within an intellectual property paradigm dominated by the US and EU and international business'. Hence the developing countries like South Africa are "forced to accept ready-made – the new intellectual property right regime prescribed by TRIPS" (Khor 2002) In fact, the African Information Society Initiatives (AISII) which is the backbone of Africa's information society policy framework has carefully evaded critical assessment of IPR. Hence, for South Africa, IPR is creating more of a digital divide than of human development.

Case 2: China

"Made in China" is a tag that has been associated with most of the commodities in the world. Even the US and EU markets are flooded with different varieties of Chinese products. These products are very easy to duplicate without being mixed with the genuine products. This may create a perception that China has a very loose IPR policy. However, trends have shown just the reverse. In 2005, there were 12,159 patent, copyright, and trademark cases filed in the United States, compared to 10,825 cases in China." In 2006, the United States saw 11,486 cases, while China witnessed 11,436 intellectual property cases.' The trend continues, as demonstrated by the fact that the number of intellectual property cases filed in 2007 for the United States totaled 10,761," whereas China's was 15,159. (Nguyen, pg 773-810) China's FDI grew from virtually nothing in 1979 to \$45.5 billion in 1998; and less than a decade later in 2006, its FDI inflow increased to \$69.5 billion. FDI flow into China accounts for more FDI than that of the entire African continent (\$35.5 billion) and is just a bit behind all of Latin America (\$83.8 billion) combined (UNCTAD, 2007). Since 1993, it has become the largest recipient of FDI among developing countries and the most popular destination of choice for multinational firms, second only to the United States. Surprisingly, China had no IPR protection before 1985. However, since the establishment of its first patent law in 1985, the growth of FDI is on the rise. The main finding from the study done by Nguyen suggests that strengthening IPR protection in China led to an increase in its FDI inflows. Empirically, on average, a 1% increase in the number of patent applications by foreign firms leads to approximately 0.6% increase in China's FDIs (Yin, 2010). Nunnenkamp and Spatz (2004) investigated the IPR-FDI linkage using sectorally disaggregated FDI data for a large sample of host countries and found that stronger IPR protection played a positive role in attracting FDI. "There are now more intellectual property cases in China than in the United States". (Nguyen, pg 773-810) One observation to be made is the creation of stereotypes of a country which has followed a closed economy for a long time. The constructed perception of a loose IPR policy hinders FDI and would attract business only from those countries who know the true story.

Case 3: India

The period of post-globalization saw the collapse of international boundary and free flow of information since 1991 in India. However, it also gave rise to duplication and IPR being susceptible to infringement leading to less credit being given to the creators of the work. So, it becomes difficult for R & D divisions of India to get adequate money if returns from IPR are not pooled back into R & D division. In fact, owing to different politicians and educationists in India, there was development in scientific research during the colonial rule itself. One of the most important initiatives was the formation of Asiatic Society of Bengal in 1784 followed by different policies in the realm of Science and Technology like Scientific Policy Resolution (SPR) in 1958 and subsequently creation of Technology Policy Statement (TPS) in 1983. Technology post globalization in India has to be linked to society and its values as per international standards. For India, this is an extremely difficult challenge due to the magnitude and heterogeneity of its population. With the initiation of technology policy, the "knowledge" component had to be transformed into technology and used for social and economic development. However, one of the problems is the association of university and practical world in the flow of indigenous knowledge. India has a rich history of scientific knowledge and this ancient knowledge is being patented abroad. Indian scholars in abroad are patenting their research works in the name of the Western world.

According to Haribabu (1999), “Scientific knowledge, which was hitherto a public resource, has become an intellectual property.” This was the beginning of commoditizing “knowledge” with international organizations and agreements defining the boundaries of knowledge percolation. Furthering this argument, it is actually a myth that globalization has dissolved boundaries. Rather, with globalization the contours of the boundaries have widened to incorporate the developing countries of the world.

The IPR regime in India has experienced two broad divisions: public funded projects which are freely available for use and private funded projects which are to be used only by paying a certain fee. The state of public libraries in respect to private funded libraries bears testimony to the difference in the acquisition of knowledge in such institutions. These instances throw light on understanding IPR in a mode of profit making through knowledge where every institution (government or private) finds some self-interest in following IPR rules. The libraries are the banks of knowledge generation and there too, stringent IPR rules hinder libraries from access to all databases thus categorizing libraries based on economic capabilities. According to Mallick (2009), “local institutional problems in developing countries often lead to a low level equilibrium trap, where the interests of government, industrialists and researchers do not converge in effective development and innovation systems building.”

IPR and Library & Information Science (LIS) professionals:

In this globalized world with the politics of information flow, Library and Information Science (LIS) Professionals are indeed facing a tough challenge. The challenge is to maintain a balance between ensuring the free flow of information and guaranteeing rewards to authors of creative works. It not only favours authors in giving incentives for their creation but it also encourages earnestly the dissemination of new knowledge. It is rather difficult for the LIS profession to unravel the implication of TRIPs as it deals with varieties of global pressures and politics. IPR is definitely required for creative ownership but that should not be at the cost of hindering the information flow by censoring or highly pricing information. LIS professionals need to concentrate on the researches carried out in different universities and institutes and make a rich database out of it. The dependency on foreign databases, books and journals sometime hinder the readers from acquiring diverse knowledge as it becomes unaffordable for libraries to procure it. The highlight of acquiring foreign knowledge is not only strengthening the value of IPR, it is also taking the focus away from indigenous research and patents. The focus of library professionals requires not a mad rush for foreign database but to suggest professors to recommend indigenous databases and books as well. This will lead to less dependency and more pressure on the professors of developing countries to publish more books and articles. The effect of this will be the creation of more bargaining power of indigenous market and lesser demand for the foreign publications. This eventually will lead to an IPR regime which is patented but less expensive and more freely available information for the LIS professionals in developing countries.

Conclusion:

The case studies of three countries, from a meta-practical approach, are testimony to the fact that rather than free flow of information, developing countries are facing restricted access to information due to IPR. Databases and online journals need a certain fee to be accessible. TRIPs has become an institution of wealth accumulation rather than knowledge dissipation to developing countries. Knowledge, thanks to IPR, is now legally a commodity for a niche segment of society. The politics of knowledge flow is associated with a host of other political circumstances and trade-offs. According to Lea (2002), “Developed countries accepted TRIPs, not because at the time the adoption of intellectual property, protection was high on their list of priorities, but because they thought the overall package offered, including the reduction of trade protectionism in developed countries, would be beneficial”. Developing countries thus start their bargaining power from a weaker position. IPR has now emerged as a new form of capitalism aimed at wealth creation. The myth projected by the

developed countries is that there will be all round economic development in the developing countries. The reality is the reverse. Due to copyright protection, wealth is flowing out of the developing countries to the developed countries. It is high time for the developing countries to realize that TRIPs agreement is more of an obstacle in free flow of information and an advantage to a selected few nations of the world. Globalization, as a concept, has obliterated boundaries between countries. In practice, it has strengthened boundaries even in those spatial areas where pre-globalization rule could not reach. Developing countries and knowledge providers need to create a pool of indigenous knowledge bank and patent them if the geo-politics of knowledge has to be put to a competitive advantage for the developing nations of the world.

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