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## IPR IN COMMERCIAL CONTRACTS

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### ABSTRACT

Effective protection and enforcement of IP rights are crucial for businesses, particularly in the context of commercial agreements in India. However, the incorporation of robust IP provisions in such agreements remains a challenge, leading to potential misuse, unauthorized registration, and post-termination disputes. This paper explores prevalent deficiencies in IP clauses, their implications, and strategies to mitigate associated risks. Through an analysis of common IP issues arising from commercial agreements, including misuse by Indian partners, unauthorized registration, and continued misappropriation after termination, underscores the necessity of precise and enforceable IP terms. By examining case studies and providing recommendations for drafting comprehensive IP clauses, the paper advocates for proactive IP protection strategies to safeguard rights, prevent exploitation, and facilitate effective enforcement and dispute resolution. Moreover, it clarifies the terminology surrounding IP licenses and emphasizes the importance of considering various licensing arrangements to optimize IP utilization and protection. Overall, this research contributes to enhancing the understanding and implementation of IP protection mechanisms in commercial agreements, with particular relevance to the Indian business landscape.

**KEYWORDS:** Intellectual property protection, Commercial agreements, India, IP clauses, Enforcement

### INTRODUCTION

The objective of every intellectual property owner is to generate revenue from their intellectual property while also prohibiting unauthorised use by others. In India, intellectual property protection is often overlooked when engaging in business agreements including franchising, distribution, licencing, supply, and manufacturing. It is usual for agreements made with Indian partners to lack specific terms related to intellectual property or to include insufficient/generic ones. It is crucial to include strong and thorough intellectual property terms in business contracts. These sections should outline the rights and responsibilities related to intellectual property, including the extent of acceptable use. This helps to close loopholes, identify misuse, and clearly define default

and breach. It aims to minimise misuse and strengthen claims against misuse or breach by establishing agreed-upon terms in the contract, making it challenging for the party at fault to dispute.<sup>1</sup>

Failure to include strong and thorough intellectual property terms may create uncertainties and vulnerabilities, allowing for the exploitation of intellectual property and difficulties in enforcing agreements with non-compliant parties. Defaulting parties might use loopholes or leverage gaps to their advantage, leading to prolonged litigation for the involved parties. Enforcers must provide strong proof to prove their ownership of the intellectual property in issue and then demonstrate that there has been abuse or violation that goes beyond what is allowed. The pursuit of revenue generation from intellectual property while preventing unauthorized use constitutes a primary objective for IP owners worldwide.<sup>2</sup> However, in India's business landscape, the incorporation of robust IP protection mechanisms within contractual agreements remains a considerable challenge. This oversight is particularly pronounced in agreements pertaining to franchising, distribution, licensing, supply, and manufacturing, where specific IP terms are often lacking or inadequately defined. As a consequence, the absence of clear delineations of rights and responsibilities concerning intellectual property creates fertile ground for ambiguity, exploitation, and legal disputes.

This paper aims to underscore the imperative of incorporating strong and comprehensive IP provisions in business contracts, especially in the Indian context. By analysing prevalent deficiencies in IP clauses and their ramifications, this research seeks to highlight the indispensability of precise and enforceable terms pertaining to intellectual property. Through an exploration of the repercussions of weak IP protection measures, this paper endeavours to emphasize the importance of closing loopholes, preventing misuse, and establishing clear frameworks for addressing defaults and breaches. Ultimately, the goal is to advocate for a paradigm shift towards proactive IP protection strategies that not only safeguard rights but also facilitate effective enforcement and dispute resolution.

## A CLOSER LOOK AT IP AGREEMENTS

An IPR Agreement is a legal contract that outlines the terms and conditions for using intellectual property assets between two or more individuals or entities. It is a method for firms to protect their IPR and ensure that their confidential information is not stolen, abused, or infringed upon. These contracts delineate the ownership of intellectual property assets and detail the terms for licencing, use, sale, or sharing.

Business owners and entrepreneurs should understand the importance of an IPR Agreement and the many forms of IPR that may be protected. When negotiating an IPRA, it is important to consider various IPR, understand the legal implications of the agreement, ensure fairness for both parties and make sure the contract terms are clear.<sup>3</sup>

<sup>1</sup> Hagedoorn, John, and Ann-Kristin Zobel. "The role of contracts and intellectual property rights in open innovation." *Technology Analysis & Strategic Management* 27, no. 9 (2015): 1050-1067.

<sup>2</sup> Merges, Robert P. "Contracting into liability rules: Intellectual property rights and collective rights organizations." *Cal L. Rev.* 84 (1996): 1293.

<sup>3</sup> Hagedoorn, John, and Ann-Kristin Ridder. "Open innovation, contracts, and intellectual property rights: an exploratory empirical study." (2012).

It is essential to implement the necessary steps to effectively negotiate IPR Agreements in order to protect the rights and intellectual property of the author. Company owners and entrepreneurs may ensure that their efforts are fairly rewarded and their intellectual property is protected against infringement.

Non-Disclosure Agreements (NDA) and Confidentiality Agreements Ensuring non-disclosure and confidentiality is important for any type of deal not only for technology, IP and trade secret matters which may be the core part of the deal, but also for business strategies, new product ideas and financial and accounting information, all of which are likely to be useful in deciding whether a deal will go forward. Non-disclosure and confidentiality undertakings are enforceable in Southeast Asia, provided that they are reasonable and fair and do not violate the public interest. Normal Western-style confidentiality undertakings setting out the agreed terms of what constitutes “confidential information” and what does not, acknowledgement of proprietary interest in the confidential information and penalties for unauthorized disclosure, etc., are also common in South-East Asia.<sup>4</sup>

## THE DIFFERENCES AND INTERACTIONS BETWEEN INTELLECTUAL PROPERTY LAW AND CONTRACT LAW

IP law and contract law represent two distinct legal domains, each serving unique functions within the realm of commercial transactions involving IPR. Intellectual property law is concerned with the legal rights and protections granted to intangible assets such as inventions, trademarks, copyrights, and trade secrets. These rights are primarily statutory, deriving from legislation and regulations enacted by the government, and they define the framework for the creation, registration, and enforcement of IPR. In contrast, contract law governs the formation, interpretation, and enforcement of agreements between parties. Rooted in common law principles and statutory provisions like the Indian Contract Act, of 1872, contract law encompasses a broad spectrum of contractual relationships, including those related to IPR.<sup>5</sup>

One key difference between the two legal domains lies in their nature and scope. Intellectual property law focuses on defining and protecting the rights associated with intangible assets, while contract law deals with the formation and enforcement of agreements between parties. While IPR are enforceable through legal mechanisms such as civil lawsuits and administrative proceedings, contracts related to intellectual property are enforced based on the terms and conditions agreed upon by the parties. Infringement of IPR can lead to remedies such as injunctions, damages, and royalties, whereas breach of contract can result in remedies specified in the contract, such as damages, specific performance, or termination.<sup>6</sup>

Despite these differences, intellectual property law and contract law frequently interact in commercial transactions involving IPR. IPR are often created through individual effort or investment but can be transferred, licensed, or assigned to other parties through contractual agreements. Contracts play a crucial role in defining the terms of such transfers or licenses, including the scope of rights, duration, royalties, warranties, and

<sup>4</sup> Tsai, Joanna, and Joshua D. Wright. "Standard setting, intellectual property rights, and the role of antitrust in regulating incomplete contracts." *Antitrust LJ* 80 (2015): 157.

<sup>5</sup> Chakravarty, Sindhura. "Importance of assignment agreements under intellectual property laws in India." (2009).

<sup>6</sup> Gupta, Tamali Sen, and Dhruv Shekhar. *Intellectual Property Law in India*. Kluwer Law International BV, 2022.

limitations on use. Additionally, contracts may enhance protection by specifying additional obligations such as confidentiality provisions or non-compete clauses. In international transactions, interactions between intellectual property law and contract law become more complex due to differences in legal systems, jurisdictions, and treaty obligations. As such, contracts may need to address issues such as choice of law, jurisdiction, arbitration, and recognition of foreign IPR to ensure effective protection and enforcement across borders.

## COMMON IP ISSUES ARISING FROM COMMERCIAL AGREEMENTS

### i. Misuse of IP by Indian Partners:

The misuse of IP by Indian partners often occurs due to a lack of clarity or specificity in the contractual arrangements regarding the scope of IP usage rights. Indian partners may inadvertently or intentionally exceed the authorized usage limits outlined in the agreement, leading to potential infringement issues. This can include scenarios where Indian partners utilize trademarks, trade dress, or copyrighted materials in ways that were not expressly permitted, such as altering logos or branding elements without approval. Moreover, cultural and linguistic differences between the franchisor/distributor and their Indian partners may contribute to misunderstandings regarding the proper use of IP. For example, interpretations of branding guidelines or marketing materials may vary, resulting in inadvertent deviations from the agreed-upon standards. Without effective communication and ongoing monitoring, these discrepancies can escalate into significant IP infringement issues that undermine the integrity and reputation of the brand.<sup>7</sup>

### ii. Unauthorized Registration of IP:

The unauthorized registration of the franchisor/distributor's IP by Indian partners poses a serious threat to the franchisor's ownership rights and brand identity. In the absence of clear contractual provisions regarding IP ownership and registration, Indian partners may exploit gaps in intellectual property laws or administrative processes to assert ownership claims over trademarks, copyrights, or domain names associated with the brand. Additionally, the lack of statutory protection for the franchisor's IP in the Indian jurisdiction may incentivize Indian partners to pre-emptively register the IP under their name to gain leverage or control over the brand's assets. This opportunistic behaviour can result in prolonged legal disputes and financial losses for the franchisor, as they seek to reclaim ownership or establish their rights through legal channels.<sup>8</sup>

Domain name registration presents a unique challenge, as the domain name system operates independently of traditional IP laws and regulations. Indian partners may engage in domain name squatting or cyber-squatting tactics, registering domain names incorporating the franchisor's trademarks or brand names to profit from resale or redirect traffic to competing websites.

<sup>7</sup> Kochhar, Sudhir. "Institutions and capacity building for the evolution of intellectual property rights regime in India: V—analysis of review of TRIPS agreement and R&D Prospect in Indian agriculture under IPR regime." (2008).

<sup>8</sup> Marcowitz-Bitton, Miriam, and Emily Michiko Morris. "The Distributive Effects of IP Registration." *Stan. Tech. L. Rev.* 23 (2020): 306.

### iii. Continued Use and Misappropriation After Termination:

The termination of a commercial agreement does not always signal the end of the franchisor/distributor's relationship with their Indian partners, particularly concerning the use of IP assets. Despite contractual provisions specifying the cessation of IP usage rights upon termination, Indian partners may resist relinquishing control or seek to exploit the established brand presence for their gain.

In cases where the franchisor/distributor has invested substantial resources in building brand recognition and consumer loyalty, the unauthorized continuation of IP usage by Indian partners can have significant repercussions. This may include consumer confusion, damage to brand reputation, and loss of market share, as consumers are misled into believing that the terminated partnership remains intact.

The McDonald's v. Vikram Bakshi<sup>9</sup> case exemplifies the challenges associated with enforcing IP rights in the aftermath of terminated commercial agreements. Despite McDonald's termination of the franchise agreement with Vikram Bakshi, the continued operation of McDonald's outlets under the brand's name by Bakshi led to protracted legal battles and reputational damage for the franchise giant.

In essence, addressing these common IP-related issues requires a comprehensive approach that encompasses clear contractual provisions, proactive IP protection measures, effective communication, and diligent enforcement strategies. By actively managing their IPR and fostering collaborative partnerships with Indian counterparts, franchisors and distributors can mitigate the risks associated with IP misuse, unauthorized registration, and continued misappropriation after termination.

### GETTING AHEAD OF POSSIBLE IP ISSUES: HOW TO MINIMIZE THESE ISSUES

Comprehensive and suitable IP terms should be evaluated on a case-by-case basis, considering the contract needs and circumstances. Some fundamental provisions to consider when drafting commercial agreements in India are:

1. **Clauses governing the scope of use of existing IP:** The scope of use of existing IP within contractual agreements is paramount for ensuring clarity and preventing ambiguity. It is essential to comprehensively define the IP, encompassing trademarks, copyrights, patents, and any other relevant rights. This ensures that all parties understand the assets covered under the agreement. Additionally, specifying permissible uses of the IP, such as in marketing, advertising, product packaging, and online presence, helps to delineate the boundaries of its usage. Utilizing digital rights management (DRM) techniques or watermarking can further aid in tracking and protecting digital assets, particularly in online marketing and promotional materials.

"The Licensee is hereby granted a non-exclusive, limited license to use the Trademarks, Copyrighted materials, and Patents owned by the Licensor solely for marketing and promoting the Licensed Products in accordance with the terms of this Agreement. The

<sup>9</sup> Vikram Bakshi v. Mc Donalds India Pvt. Ltd., 2014 SCC OnLine Del 7249.

Licensee shall not modify or alter the Trademarks, Copyrighted materials, or Patents without the prior written consent of the Licensor. All digital promotional materials containing the Licensed IP shall be watermarked with the Licensee's unique identifier to prevent unauthorized use."

- 2. Clauses governing the use of know-how:** Safeguarding know-how and trade secrets within contractual agreements requires a multifaceted approach. In addition to contractual clauses, implementing technological safeguards like encryption and access controls can further protect sensitive information. Non-compete clauses may also be included to prevent employees or business partners from utilizing acquired know-how for competitive purposes post-termination. Regular training sessions and awareness programs for employees and partners can reinforce the importance of confidentiality and the consequences of IP misuse.

"The Receiving Party agrees to maintain strict confidentiality with respect to any proprietary information, trade secrets, or know-how disclosed by the Disclosing Party during the term of this Agreement and for a period of five (5) years thereafter. The Receiving Party shall implement appropriate technological safeguards, including encryption and access controls, to protect the confidentiality of the Disclosing Party's know-how. Upon termination of this Agreement, the Receiving Party shall promptly return or destroy all materials containing the Disclosing Party's know-how."

- 3. Clauses governing copycat/counterfeit/unauthorized/unlicensed product(s) and adoption of similar IP:** Preventing the unauthorized use or replication of IP and the production of counterfeit goods requires vigilance and proactive measures. Alongside contractual provisions, regular audits and monitoring mechanisms can help detect and prevent unauthorized use or replication of IP. Implementing blockchain technology or serialization can provide a transparent and immutable record of product authenticity, aiding in the identification and mitigation of counterfeit goods.

"The Manufacturer agrees not to produce, distribute, or sell any counterfeit or unauthorized products bearing the Licensed IP. The Manufacturer shall conduct regular audits of its production facilities to detect and prevent the production of counterfeit goods. If counterfeit goods are discovered, the Manufacturer shall immediately cease production and notify the Licensor. The Manufacturer shall cooperate fully with the Licensor in any investigation or legal action taken against parties involved in the production or distribution of counterfeit goods."

- 4. Clauses governing post-termination obligations:** The management of IP post-termination is crucial for protecting the rights and interests of all parties involved. The agreement should outline procedures for the return or destruction of any materials or assets containing the licensed IP upon termination. Additionally, including provisions for dispute resolution mechanisms, such as arbitration or mediation, can expedite the resolution of post-termination disputes regarding IP usage.

"Upon termination of this Agreement, the Licensee shall immediately cease all use of the Licensed IP and return to the Licensor any materials containing the Licensed IP. The Licensee shall also discontinue the use of any domain names or social media accounts associated with the Licensed IP. Any remaining inventory bearing the Licensed IP shall be sold or disposed of in accordance with the instructions of the Licensor. The Licensee agrees to indemnify the Licensor for any damages incurred as a result of the Licensee's post-termination use of the Licensed IP."

5. **Clauses governing non-disclosure and indemnification:** Strengthening confidentiality and indemnification clauses within contractual agreements is essential for protecting IP and mitigating risks. Regular training sessions and awareness programs for employees and partners can reinforce the importance of confidentiality and the consequences of IP misuse. Indemnification clauses should delineate the extent of liability and the procedures for invoking indemnification in case of IP infringement or breach of confidentiality.

"The Parties agree to maintain strict confidentiality with respect to any confidential information disclosed during the term of this Agreement and for a period of five (5) years thereafter. In the event of any breach of confidentiality by either Party, the breaching Party shall indemnify the non-breaching Party for any damages resulting from such breach, including legal fees and costs incurred in enforcing this provision."

6. **Clauses governing Jurisdiction:** Determining the jurisdiction for enforcement and resolution of disputes is crucial for ensuring the effective protection of IP rights. Collaborating with legal experts familiar with both Indian and international IP laws can help craft jurisdiction clauses that are enforceable and aligned with the interests of the IP owner. Considering alternative dispute resolution mechanisms, such as arbitration or mediation, can offer faster and more cost-effective solutions compared to traditional litigation in Indian courts.

"This Agreement shall be governed by and construed in accordance with the laws of the Republic of India. Any dispute arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of [insert jurisdiction], to the exclusion of any other courts. The Parties hereby waive any objections to the jurisdiction of such courts on the grounds of venue or forum non conveniens."

7. **Detailed Provisions:** Incorporating detailed provisions within IP-related agreements enhances clarity and effectiveness in enforcement. Utilizing technologies like smart contracts on blockchain platforms can automate the execution and enforcement of IP-related agreements, enhancing transparency and efficiency. Regular reviews and updates of IP-related agreements are essential to ensure alignment with evolving business strategies and regulatory changes in India and other relevant jurisdictions.

"The Parties agree that any modifications or amendments to this Agreement shall be made in writing and signed by both Parties. This Agreement constitutes the entire

agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. Any notices or communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by registered or certified mail, postage prepaid, or by recognized courier service."

BLBPL's rights under the franchise agreement regarding YSL's intellectual property are limited and will end when the franchise agreement ends, regardless of YSL's knowledge of the supply agreement. BLBPL cannot be considered an authorised user, and any use of the intellectual property would be seen as infringement. The franchise agreement, which included intellectual property-focused clauses, bolstered YSL's position, even in relation to a sub-franchisor with whom it did not have a direct agreement. This facilitated easier and more direct enforcement without the need to demonstrate or refute awareness of the supplementary supply agreement.<sup>10</sup>

### THE IP "LICENSE" – CLARIFYING THE TERMINOLOGY

A licence is an authorization that permits someone else to carry out a certain action. A licence is often issued in exchange for money. An IP licence is an agreement between the owner of intellectual property (licensor) and a third party (licensee) that permits the licensee to use the licensor's intellectual property for certain purposes. It is essential to precisely define the scope of the activity and the specific IP that is licenced in the agreement. For instance, an NDA can permit your prospective partner to disclose your trade secrets internally or to certain other parties. An employment contract may include provisions that explicitly permit workers to use the company's intellectual property for certain assignments. Therefore, it is beneficial to consider licencing your intellectual property under each of the agreements mentioned above. By including the essential IP terms in the agreement, you may secure contractual protection against the other party in your commercial dealings. SMEs should decide if adopting a non-exclusive business strategy for licencing would generate more money overall or allow them to access markets that would otherwise be inaccessible.<sup>11</sup>

Memorandum of Understanding (MOU) documents are not legally enforceable agreements but are created to guarantee that all parties have a mutual understanding. They often include the sharing or use of intellectual property. An MOU is often used prior to parties engaging in a more intricate formal agreement, such as a franchising arrangement. It is vital to consider implementing an NDA or another kind of enforceable confidentiality agreement when signing an MOU.<sup>12</sup>

Contracts for employment and agency relationships Typically, workers use the firm's intellectual property and also help develop and produce new intellectual property for the organisation. The statement also applies to agents hired to carry out activities for the organisation. It is crucial to include IP in all agreements, including

<sup>10</sup> Kamiike, Atsuko. "The TRIPS agreement and the pharmaceutical industry in India." *Journal of Interdisciplinary Economics* 32, no. 1 (2020): 95-113.

<sup>11</sup> Basedow, Jürgen, Josef Drexl, Annette Kur, and Axel Metzger. "Intellectual property in the conflict of laws." *Intellectual Property in the Conflict of Laws* (2022): 1-285.

<sup>12</sup> Malherbe, Cornelia, Cornelius SL Schutte, Gerardus Verhoef, Petrie Meyer, and Theodorus Doubell. "Suitable contract instruments and intellectual property valuation methodologies for industry-university collaboration." *Industry and Higher Education* (2023): 09504222231185556.



patenting of innovations, ownership of copyright, post-employment terms for returning property, and confidentiality. In nations like Indonesia or Thailand, copyright works produced by an employee while on the job are held by the employee, unless there is a different agreement between the parties. In countries like Singapore or Malaysia, laws state that if an employee creates a work during their employment, the copyright is typically owned by the person who requested the work or the employer, unless specified otherwise. This matter should be verified with the Helpdesk staff or local legal professionals. Thus, all employment contracts should include a provision stipulating that all intellectual property, including copyrighted works, belong to the firm. Some agreements may include transferring all copyright works from the employee to the firm.<sup>13</sup>

The general stance regarding IP is that the corporation typically owns it. However, to avoid any confusion, the employment contract should explicitly mention that the firm has ownership of the IP. Specific national laws may introduce additional regulations. For example, Thai patent law specifies that an employer can apply for a patent. However, an employee-inventor is entitled to extra compensation beyond their usual salary if the employer profits from the invention. This entitlement is not subject to exemption by any clauses in the employment agreement. The payment amount is determined and awarded by the director-general of the Department of Intellectual Property, considering factors such as the employee's salary, the significance of the innovation, and the present and future advantages of the creation. For companies with a strong focus on creativity or research and development, it is important to distinguish between pre-existing intellectual property (produced before the agreement) and intellectual property developed during an employee's tenure to establish ownership rights. An employer often has rights to intellectual property developed only after the agreement's effective date.<sup>14</sup>

### These factors are generally applicable to all types of licences:

1. **Exclusive Licenses:** An exclusive license represents a contractual agreement where the licensor grants the licensee sole authorization to utilize, produce, market, or distribute certain intellectual property assets within a designated region. Crucially, the terms of the license agreement must be thoroughly reviewed to ascertain whether the licensor retains the authority to issue additional licenses to other parties. In some jurisdictions, particularly in Southeast Asia, such as Thailand and Vietnam, trademark license agreements are required to explicitly state whether the license grant is exclusive or non-exclusive. It's noteworthy that in the absence of explicit restrictions within the agreement, the licensor is generally presumed to have the authority to grant further permissions. Furthermore, within the realm of patented technologies, a written license agreement is often obligatory, and registration may be mandated to establish legal validity.<sup>15</sup>
2. **Non-Exclusive Licenses:** Non-exclusive licensing arrangements afford the licensor the right to use the intellectual property themselves and to grant permission to multiple parties, in addition to the primary

<sup>13</sup> Dusollier, Séverine. "Intellectual property and the bundle-of-rights metaphor." *Kritika, Essays in Intellectual property*, Edward Elgar 4 (2020).

<sup>14</sup> Hagedoorn, John, and Ann-Kristin Zobel. "The role of contracts and intellectual property rights in open innovation." *Technology Analysis & Strategic Management* 27, no. 9 (2015): 1050-1067.

<sup>15</sup> Ullrich, Hanns. "Intellectual property: exclusive rights for a purpose—the case of technology protection by patents and copyright." *Max Planck Institute for Intellectual Property & Competition Law Research Paper* 13-01 (2012): 425-459.

licensee, to utilize the assets. Particularly in the case of trademark licenses, local regulations may necessitate the inclusion of specific language indicating the non-exclusive nature of the agreement for it to be eligible for registration with the pertinent Intellectual Property Office. Likewise, non-exclusive copyright licenses empower the copyright owner to bestow the rights to their work upon numerous individuals as they see fit. The requirement for whether exclusive or non-exclusive license clauses are mandated in patent licenses often remains unspecified by law, thereby necessitating mutual agreement between the parties involved based on their specific circumstances.<sup>16</sup>

3. **Reservations to Allow the Licensor to Use:** Reservations to allow the licensor to use the licensed intellectual property alongside the licensee represent a nuanced approach in licensing agreements. While granting the licensee privileges akin to those of an exclusive license, the licensor retains the right to utilize the intellectual property within the licensed region and potentially beyond. This arrangement enables the licensor, as the rightful owner of the intellectual property, to conduct business concurrently with the licensee within the specified territory. Such arrangements are commonly employed in scenarios where the capabilities of the licensee are uncertain, providing the licensor with the authority to utilize the intellectual property should the licensee fail to fulfil its obligations under the agreement.<sup>17</sup>
4. **Transferable and Non-Transferable Licenses:** The transferability of a license, whether it can be assigned to other parties, is typically determined through negotiation between the involved parties. While a robust licensor may reserve the right to transfer or assign the license at their discretion, they might impose restrictions on the licensee's ability to transfer the license without obtaining prior written consent. The ability of the licensee to transfer the license to third parties can potentially result in increased profits from the licensed intellectual property. However, it also introduces the risk of uncontrolled dissemination of the intellectual property, thereby necessitating careful consideration and agreement on transferability terms within the licensing agreement.<sup>18</sup>

## CONCLUSION

Intellectual property is an essential component of any business's assets. Misuse may lead to misappropriation and tarnishing of a brand, among other consequences. Commercial agreements often provide access to intellectual property, which may potentially lead to abuse.

The Indian legal system offers remedies for the abuse of IP in business agreements. However, ambiguity over IP ownership and usage complicates the process of enforcing these rights.

When negotiating business agreements, it is crucial to prioritise investing in IP protection. This involves proactively incorporating detailed IP terms that define rights and duties related to the IP to prevent abuse.

<sup>16</sup> Antonelli, Cristiano. "Towards non-exclusive intellectual property rights." *Routledge Handbook of the Economics of Knowledge* (2014): 209.

<sup>17</sup> Özel, Sıla Öcalan, and Julien Pénin. "Exclusive or open? An economic analysis of university intellectual property patenting and licensing strategies." *Journal of Innovation Economics Management* 21, no. 3 (2016): 133-153.

<sup>18</sup> Amangeldykyzy, Amangeldy Aizhan. "TRANSFERABILITY OF RIGHTS IN THE SPHERE OF INTELLECTUAL PROPERTY." *Вестник Института законодательства и правовой информации Республики Казахстан* 1 (72) (2023): 72-80.

Even with suitable IP-focused provisions, IP problems cannot be eliminated. Investing in precise IP particular provisions is very beneficial and efficient. These provisions help to clearly define rights and responsibilities in different scenarios, discouraging dishonest behaviour and exploitation, but also streamlining the process for seeking redress in case of misuse. Clear IPR in business agreements decrease the amount of evidence needed and time spent on enforcement, as well as the associated expenses.

The journey through the intricacies of IP protection within commercial agreements reveals a landscape rife with challenges and opportunities. From the bustling markets of India to the global stage, the imperative of safeguarding IP rights resonates profoundly across industries and borders.

As we've traversed the terrain of IP agreements, it becomes abundantly clear that mere oversight or generic clauses are inadequate shields against the complexities of modern business dealings. The absence of robust IP provisions opens the floodgates to ambiguity, exploitation, and legal quagmires. In India, where cultural nuances intersect with legal frameworks, the need for precision in contractual language is paramount.

Yet, amidst the challenges lie opportunities for proactive measures and strategic foresight. By incorporating comprehensive IP terms, businesses can fortify their defences, minimize risks, and pave the way for sustainable growth. From delineating usage rights to navigating post-termination obligations, every clause serves as a bulwark against infringement and dispute.

Furthermore, the discussion on IP licenses illuminates the spectrum of possibilities, from exclusive grants to reservations and transferability clauses. Each facet underscores the importance of clarity, negotiation, and alignment with business objectives.

As we navigate the complexities of IP agreements, it's essential to recognize the power of collaboration and knowledge-sharing. Legal experts, industry practitioners, and policymakers play pivotal roles in shaping the landscape of IP protection, fostering innovation, and ensuring equitable outcomes for all stakeholders.

In the pursuit of economic prosperity and technological advancement, let us heed the lessons learned from this exploration. Let us champion the cause of robust IP protection, not merely as a legal obligation but as a cornerstone of ethical business practices. Together, we can forge a future where innovation thrives, creativity flourishes, and IPR are upheld with unwavering vigilance.

In essence, the journey through IP agreements is not merely a legal exercise but a testament to our commitment to fostering a world where ideas are valued, protected, and celebrated. As we embark on this journey, let us embrace the challenges with courage, the opportunities with optimism, and the principles of integrity and fairness as our guiding beacons.