



# “BREAKING BARRIERS: THE RELATION BETWEEN CONTRACT AND INTELLECTUAL PROPERTY LAW”

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## **ABSTRACT:**

IP-related contracts often may include an assignment or license of IP to another party. An assignment would result in transfer of ownership rights to the IP, while a license may permit the other party to engage in activities that would otherwise violate the owner's IP rights. The article of the study of the symbiotic relationship between copyright and contract law. The intellectual property bargain, or the delicate balance that allegedly exists in current intellectual property law, cannot be seen merely as a matter of a balance stated in property law rules. An interaction between intellectual property and contract rules has always been a primary characteristic of intellectual property distributed in the open market and that interaction is central to whatever balance has been achieved. When one speaks about an existing balance in the property rights sector, it is futile to focus solely on the statutory provisions of the copyright, patent or trademark laws. One must, of necessity, understand and incorporate the fact that the policy choice has always assumed that property rights are routinely transferred, waived, released, and licensed. Only the most naive observer, or one with a clear political agenda, can look at the intellectual property laws and their history and suggest that policy in the property sphere trumps or precludes the influence of contract. In contractual relationships, underlying property rights are often relatively unimportant. They provide "default rules" that state a legal position that exists between the contracting parties unless the parties otherwise agree. Contract law provides other default rules. In the digital world, the contract rather than the underlying property law defines the product. This being said, however, there are some settings in which contract law, intellectual property, or competition law place limits on the ability to enforce some contract terms. This Article explores some of these areas and describes their limited role in modern commerce. Patents, trademarks, copyrights, and trade secrets are valuable assets of the company and understanding how they work and how they are created is critical to knowing how to protect them.

**Key words:** IP-related contracts, Contract law, property rights, modern commerce. Patents, trademarks, copyrights, and trade secrets .

## INTRODUCTION:

The article shows the -symbiotic relationship between copyright and contract law. The intellectual property bargain, or the delicate balance that allegedly exists in current intellectual property law, cannot be seen merely as a matter of a balance stated in property law rules. The Indian Contract Act occupies the most important place in the Commercial Law. Without contract Act, it would have been difficult to carry on trade or any other business activity and in employment law. It is not only the business community which is concerned with the Contract Act, but it affects everybody. The objective of the Contract Act is to ensure that the rights and obligations arising out of a contract are honored and that legal remedies are made available to those who are affected. According to Indian Contract Act, 1872 Section 1, this Act may be called the Indian Contract Act, 1872. An interaction between intellectual property and contract rules has always been a primary characteristic of intellectual property distributed in the open market and that interaction is central to whatever balance has been achieved. When one speaks about an existing balance in the property rights sector, it is futile to focus solely on the statutory provisions of the copyright, patent or trademark laws. One must, of necessity, understand and incorporate the fact that the policy choice has always assumed that property rights are routinely transferred, waived, released, and licensed. Only the most naive observer, or one with a clear political agenda, can look at the intellectual property laws and their history and suggest that policy in the property sphere trumps or precludes the influence of contract. In contractual relationships, underlying property rights are often relatively unimportant. They provide "default rules" that state a legal position that exists between the contracting parties unless the parties otherwise agree<sup>[1]</sup>. Contract law provides other default rules. In the digital world, the contract rather than the underlying property law defines the product. This being said, however, there are some settings in which contract law, intellectual property, or competition law place limits on the ability to enforce some contract terms. This Article explores some of these areas and describes their limited role in modern commerce. Some of the commentary about the future of copyright in the information industries on the Internet, it often appears as if some believe that we are facing an impending big bang as the fields of copyright and contract head toward some unclearly defined, but cataclysmic conflict. It is argued, for political effect, that by bringing contract to the context of information transactions, contracts will be used to stifle free speech and comment or to block access to materials that are otherwise in the public domain. Nothing could be further from the truth and, indeed, the fundamental premise is flawed. Contract and intellectual property law have always co-existed, not only peacefully, but in an aggressive interaction between mutually supportive fields. Modern efforts to tailor contract themes to fit the digital information era and the commerce it yields follow that tradition. The fields will continue to co-exist, although changes in distribution and accessibility caused by Internet-related technologies will transform copyright law and expand the role of contracting. In the new world of digital information, especially on-line digital information, contract law and contracting practice play a dominant role. Traditional copyright law will recede in importance because many aspects of the on-line distribution methodology are not suited to property right constructs centered on the making and distributing of copies as the main property right. Instead, intellectual property law grounded in trademark and other competition or product identification principles will have increasing importance. New property interests, dealing with transmission, extraction, and access, will be created<sup>[2]</sup>.

## THE CORE RELATIONSHIP:

Historically, there have always been two different methods through which information and information assets are created and distributed through our culture, open forum and contract. A fear that drives some of the dispute about the relative roles of contract and intellectual property in the information world lies in the unstated belief that circumstances, mostly economic and technological in nature, will shrink the importance of intellectual property law and enhance the importance of contract law. This fear, however, is unfounded because, as discussed below, contract and intellectual property laws regarding the creation and/or dissemination of informational assets while different are symbiotic<sup>[3]</sup>.

## DIVISION OF THE INDIAN CONTRACT ACT

General division of the Indian Contract Act, in the past, Indian Contract Act had a wide scope and included from Section 1 to 75 the General Principles of contract, Section 76-123 includes Sale of Goods Act, Sections

124 -147 deals with Contracts of Indemnity and Guarantee, Section 148-181 is about contracts of Bailment and Pledge, Section 182-238 is of Agency, Section 239-266 is of Partnership Act<sup>[4]</sup>.

## ***CONTRACT***

As per the Indian Contract Act, 1872, a "contract" is an agreement enforceable by law. The agreements are not enforceable by law are not contracts. An "agreement" means 'a promise or a set of promises' forming consideration for each other. And a promise arises when a proposal is accepted. By implication, an agreement is an accepted proposal. In other words, an agreement consists of an 'offer' and its 'acceptance'.

## ***OFFER***

An "offer" is the starting point in the process of making an agreement. Every agreement begins with one party making an offer to sell something or to provide a service, etc. When one person who desires to create a legal obligation, communicates to another his willingness to do or not to do a thing, with a view to obtaining the consent of that other person towards such an act or abstinence, the person is said to be making a proposal or offer.

## ***ACCEPTANCE***

An agreement emerges from the acceptance of the offer. "Acceptance" is thus, the second stage of completing a contract. An acceptance is the act of manifestation by the offeree of his assent to the terms of the offer. It signifies the offeree's willingness to be bound by the terms of the proposal communicated to him. To be valid an acceptance must correspond exactly with the terms of the offer, it must be unconditional and absolute and it must be communicated to the offeror.

## ***AGREEMENT:***

An "agreement" is a contract if 'it is made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and is not expressly declared to be void'. The contract must be definite and its purpose should be to create a legal relationship. The parties to a contract must have the legal capacity to make it. According to the Contract Act, "Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of a sound mind, and is not disqualified from contracting by any law to which he is subject". Thus, minors; persons of unsound mind and Persons disqualified from contracting by any law are incompetent to contract<sup>[5]</sup>.

## ***CONSENT***

Consent is very important part of the contract. The contracts become Void if misrepresentation, mistake or anything like this the fraud will be committed. In case of a breach of a contract specific performance is granted but it has various exceptions to it, depending on the situation. If the general essential ingredients of a contract are fulfilled, a valid legal contract is formed and it becomes effective from the date it is signed.

## ***CONSIDERATION***

Mutual and lawful consideration for agreement, it should be enforceable by law. Hence, intention should be to create legal relationship. Agreements of social or domestic nature are not contracts, Parties should be competent to contract, and contract should not have been declared as void under Contract Act or any other law is also important elements of a valid contract. The contract becomes Void if any of these elements are not fulfilled.

Nature & types Of Contracts based on validity can come in five different forms, including valid contracts, void contracts, voidable contracts, illegal contracts, and unenforceable contracts. A valid contract is one that is legally enforceable, while a void contract is unenforceable and imposes no obligations on the parties involved.

**BREAKING BARRIERS:**

A barrier is an obstacle or an obstruction in the process of things. It can be a system, a party, or even an individual. Barriers limit or prevent people from achieving equality. These elements can cause a hindrance for others from performing their best, exploring their potentials, or stopping their progress completely. Breaking barriers in history is never easy. Systemic barriers slow down processes, limit growth, or they can cause problems in particular ecosystems. These kinds of barriers are often practiced for a long time and can take even longer time to break down. Systemic barriers usually exist in economic policies or organizational practices. However, barriers are not always and don't necessarily mean barriers that are prejudice or discriminatory in nature. Any form of obstruction or hindrance to a process, operation, or activity, etc., can be considered a barrier. When addressing barriers to inclusion in the workplace, leaders can provide accommodations and processes so that individuals can participate and be more fully engaged in the workplace. It's an important first step but the real goal should be to remove the barriers completely so that everyone can work barriers<sup>[6]</sup>

**TYPES OF BREAKING BARRIERS:**

There are five key barriers that can occur within a company: language, cultural diversity, gender differences, status differences and physical separation.

Breaking Barriers: To improve understanding and communication between people who have different opinions and the talks were meant to break down barriers between the two groups.

Following are some of the barriers to effective communication:

- Semantic barriers.
- Psychological barriers.
- Organisational barriers.
- Cultural barriers.
- Physical barriers.
- Physiological barriers.

Primary Sources for Possible "Breaking Barriers"<sup>[7]</sup>

- Space Exploration
- Sports
- Technology
- Americans with Disabilities
- LGBTQ+ Rights
- Creating the Bill of Rights
- Free Speech
- The Spread of Slavery & Fugitive Slave Act
- Westward Expansion
- The Transcontinental Railroad
- Panama Canal
- Treaty of Versailles & League of Nations
- WWII Refugees
- NATO
- Cold War Detente
- The Berlin Wall
- Women's Suffrage
- Women in the Workforce
- They can also come from an individual where a person may have some limitations on language, skills, or abilities.
- Cultural barriers. ...
- Attitudinal Barriers. ...
- Communication barriers. ...
- Gender barriers at the workplace. ...
- Women Breaking Barriers. ...

- Trade barriers in the economy. ...
- Natural barriers. ...
- Language Barriers

### ***ACTION OF BARRIERS:***

There are multiple barriers to action which may encourage hesitation in an emergency.

- ❖ Presence of Bystanders. The presence of bystanders may make lifesavers reluctant to act. ...
- ❖ Uncertainty About the casualty. ...
- ❖ Nature of the Injury / Illness. ...
- ❖ Fear of Doing Something Wrong.

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### **OBJECTIVES:**

01. To study how to protect and enforce rights of the creators and owners of inventions, writing, music, designs and other works i.e. "intellectual property."
02. To study how to protect intellectual property including copyright, trademarks, patents, and trade secrets.
03. To ensure that the rights and obligations arising out of a contract are honored
04. To ensure that the legal remedies are made available to those who are affected. According to Indian Contract Act, 1872 Section 1

### **HOW TO PROTECT INTELLECTUAL PROPERTY: COMMON GROUND-RULES:**

The second part of the TRIPS Agreement looks at different kinds of intellectual property rights and how to protect them. The purpose is to ensure that minimum standards of protection exist in all WTO members. Some areas are not covered by these agreements. In some cases, the standards of protection prescribed were thought inadequate. So the TRIPS Agreement adds significantly to existing international standards<sup>[8]</sup>.

### ***Copyright***

Copyright usually refers to the rights of authors in their literary and artistic works. In a wider sense, copyright also includes 'related rights': the rights of performers, producers of phonograms and broadcasting organizations.

During the Uruguay Round negotiations, members considered that the standards for copyright protection in the Berne Convention for the Protection of Literary and Artistic Works were largely satisfactory. The TRIPS Agreement provisions on copyright and related rights clarify or add obligations on a number of points:

- The TRIPS Agreement ensures that computer programs will be protected as literary works under the Berne Convention and outlines how databases must be protected under copyright;
- It also expands international copyright rules to cover rental rights. Authors of computer programs and producers of sound recordings must have the right to prohibit the commercial rental of their works to the public. A similar exclusive right applies to films where commercial rental has led to widespread copying, affecting copyright-owners' potential earnings from their films; and
- It says performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances (bootlegging) for no less than a specific period of years (50 years). Producers of sound recordings must have the right to prevent the unauthorized reproduction of recordings for a specific period of years<sup>[9]</sup>.

## ***Trademarks***

A trademark is a sign or a combination of signs used to distinguish the goods or services of one enterprise from another.

The TRIPS Agreement defines what types of signs must be eligible for protection as trademarks, and what the minimum rights conferred on their owners must be. It says that service marks must be protected in the same way as trademarks used for goods. Marks that have become well-known in a particular country enjoy additional protect

## ***Geographical indications***

A name or indication associated with a place is sometimes used to identify a product. This “geographical indication” does not only say where the product comes from. More importantly, it identifies the product’s special characteristics, which are the result of the product’s origins.

Using the indication when the product was made elsewhere or when it does not have the usual characteristics can mislead consumers, and can lead to unfair competition. The TRIPS Agreement says members have to provide ways to prevent such misuse of geographical indications.

## ***Industrial designs***

Industrial design is generally understood to refer to the ornamental or aesthetic aspect of an article rather than its technical features.

Under the TRIPS Agreement, original or new industrial designs must be protected for at least 10 years. Owners of protected designs must be able to prevent the manufacture, sale or importation of articles bearing or embodying a design which is a copy or substantially a copy of the protected design for commercial purposes<sup>[10]</sup>.

## ***Patents***

The TRIPS Agreement says patent protection must be available for eligible inventions in all fields of technology that are new, involve an inventive step and can be industrially applied. Eligible inventions include both products and processes. They must be protected for at least 20 years. However, governments can refuse to issue a patent for an invention if its sale needs to be prohibited for reasons of public order or morality. They can also exclude diagnostic, therapeutic and surgical methods, plants and animals (other than micro-organisms), and biological processes for their production (other than microbiological processes) from patent protection.

## ***Layout designs of integrated circuits***

An integrated circuit is an electronic device that incorporates individual electronic components within a single ‘integrated’ platform configured to perform an electronic function.

The protection of layout designs of integrated circuits (“topographies”) in the TRIPS Agreement is provided through the incorporation of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits, a treaty that was concluded under the World Intellectual Property Organization in 1989, but has not yet entered into force. The TRIPS Agreement adds a number of provisions: for example, protection must be available for at least 10 years. In practice, layout designs of integrated circuits are commonly protected under patents.

## ***Undisclosed information***

Undisclosed information includes trade secrets and test data. Trade secrets must be protected against unauthorized use, including through breach of contract or confidence or other acts contrary to honest commercial practices. Such protection is conditional upon the information being secret, having commercial value and reasonable steps having been taken by its owner to keep the information secret.

### *Anti-competitive practices in licensing*

One way for a right holder to commercially exploit his or her intellectual property rights includes issuing a licence to someone else to use the rights. Recognizing the possibility that right holders might include conditions that are anti-competitive, the TRIPS Agreement says that under certain conditions, governments have the right to take action to prevent anti-competitive licensing practices. It also says governments must be prepared to consult each other on controlling anti-competitive licensing practices.

### *Enforcement*

In order for the protection of intellectual property rights to be meaningful, WTO members must give right holders the tools to ensure that their intellectual property rights are respected. Enforcement procedures to do so are covered in part III of the TRIPS Agreement. The Agreement says governments have to ensure that intellectual property rights can be enforced to prevent or deter violations. The procedures must be fair and equitable, and not unnecessarily complicated or costly. They must not entail unreasonable time-limits or unwarranted delays. People involved must be able to ask a court to review an administrative decision or to appeal a lower court's ruling.

### *Technology transfer*

Developing country members in particular see technology transfer as part of the bargain in which they have agreed to protect intellectual property rights. The TRIPS Agreement aims for the transfer of technology (see above) and requires developed country members to provide incentives for their companies to promote the transfer of technology to least-developed countries in order to enable them to create a sound and viable technological base. More on technology transfer<sup>[11]</sup>.

### **CONCLUSION:**

They are various forms of contracts such as contract of indemnity, contract of guarantee, agency etc. The contract act illustrates elements that need to be fulfilled for a valid contract along with exception and afterwards it deals with the sections that illustrates the remedies for both parties in case the contract has been breached or has been considered to be void in case of any of the elements not being fulfilled. It is very important for a normal day to day trading and regular dealing to have a valid and effective contract and it need to be made affective under the Contract act. Without doubt, the most significant insight that one can take from reviewing the relationship of contract and intellectual property is that, rather than fields in newly-found conflict, these are two areas of law that have long co-existed. At least with respect to copyright, these areas of law depend on each other for support in the goals purportedly at the core of copyright law regime. Copyright and other forms of intellectual property law cannot, and have never been able to, foster active development and distribution of information products in society without relying extensively on contracts. Indeed, as we have seen, commercialization, which depends on contractual relationships, constitutes one of the core mechanisms by which information is developed and distributed. It is a central part of the intellectual property law "bargain" and should be recognized as such. This is not to say that there are never points of tension or of potential conflict. Yet, those points of tension have always been resolved by contextually nuanced analyses of particular cases and particular claims of abuse. That is as it should be. The idea that property rights law, with its concentration on vested rights and positions stated against third parties, can ever provide an adequate template for the complex and increasingly diverse information economy borders on the absurd and certainly entertains the impossible. One may wish that old distribution systems and older models of how the public receives and uses information would remain intact. But wishing does not stem a vibrant economic and technological revolution that surrounds us all today.

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