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## IMPACT OF GLOBALIZATION ON INTELLECTUAL PROPERTY RIGHTS

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### ABSTRACT

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time. The world has transformed into a global village, as goods and services move seamless across borders. Companies and organisations are becoming more and more multinational, with production and research centres spread across many countries. What is the impact of globalisation on intellectual property rights, or IPR? The new global IPR system comes with both benefits and costs. Stronger IPRs protection should increase incentives for innovation and raise returns to international technology transfer. These all issues will be discussed in detail in this research paper.

**Keywords:** *Intellectual property rights, Globalisation, Patent, Trademark, Copyright, Design.*

### INTRODUCTION

Intellectual Property Rights (IPRs) have become ubiquitous in the current debate and have emerged as the key issue of global innovation policy. The 'Trade Related Aspects of Intellectual Property Rights' (TRIPS) Agreement, signed in 1994 as a founding element of the World Trade Organisation, represents the most important attempt to establish a global harmonisation of Intellectual Property protection. TRIPS constitute the most important attempt to establish a global harmonisation of Intellectual Property (IP) protection and enforcement, creating international standards for the protection of patents, copyrights, trademarks and design. It also provides a dispute settlement schema and establishes enforcement procedures at the intergovernmental level. Not surprisingly, TRIPS has been highly debated by social scientists and economists. But TRIPS has also been debated outside academe and has been vigorously opposed by nongovernmental organisations and global movements.<sup>i</sup>

### Intellectual Property Rights and Global Dimensions

Justice Bhagwati explained Globalization as an extension of capitalism throughout the world. "Globalization means different things to different people" (Bhalla, 1998). The term is used generally to refer to a phenomenon defined or measured by flows of trade and investment between countries (Bhalla, 1998; James, 1998). Globalization as referring to "the process whereby capitalism is increasingly constituted on a transnational basis, not only in the trade of goods and services but, even more important, in the flow of capital and the trade in currencies and financial instruments" (McChesney, 1998) It is related to economic, political, technological and cultural exchanges of goods and services between countries. It is the integration and amalgamation of global economies through the influence of developed countries and multinational corporations that are driven by technological change. Under Globalization the goods and services are exchanged at a faster rate and investors are interested more in the country where Intellectual Property Rights are strong and offer wider range of protection. Thus, during the past decades, countries across the globe have strived for strong Intellectual Property Right, and its enforcement worldwide. The most important initiative that could be seen for global harmonization is that of TRIPS (Trade Related aspects of Intellectual Property Rights) signed in 1994 to become the core element of World Trade Organization. Thus, this paper contains the analysis of the impact of TRIPS (Trade Related aspects of Intellectual Property Rights) on the global change from generation to generation and distribution of such knowledge with the tint of Innovation in patent protection in relation with public health. Government worldwide and Multinational corporations alleges that strong and uniform intellectual property rights will lead to better protection of innovation globally. 21st century is described as the age of Globalization, a big word with several meanings and a phenomenon which is constantly affecting the human beings in every aspect of life. Globalization with significant economic, social integration on global level has also brought consequences on migration, technology, corporations, institutions and Public Health. Ensuring that the vehicles of Globalization are oriented towards development and promotion of human rights through appropriate law and policies. State has a responsibility to respect, promote and protect human rights in the face of Globalization.<sup>ii</sup>

We live today in a world in which the economic health of nations and the competitiveness of firms is determined largely by the ability to develop, commercialize, and most importantly, to appropriate (or capture) the economic benefits from scientific and technological (S&T) innovations. Intellectual property rights (IPRs), such as patents and copyrights, are an important means used by firms to help protect their investments in innovation. They are legal instruments that have been used by governments for centuries to encourage industrial development and economic growth. IPRs protect investments in innovation by granting the innovator a temporary monopoly on the use of the innovation. This prevents rapid imitation that could cut into the innovator's returns and decrease the incentive to innovate. By restricting imitation, however, IPRs arguably raise the cost of the new technology and restrict its availability. This may, in turn, retard further progress in the technology by preventing other firms from developing new innovations or improvements that build on the original innovation in a cumulative way. If the new technology has productivity-enhancing effects when used in economic activity, these too may be retarded by the protection of the original innovation.<sup>iii</sup>

The relationship between intellectual property protection and international trade has been one of the most controversial issues in global negotiations in recent years. The debate has largely about the implications of the agreement on the Trade-related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO) for international trade in general, and for developing countries in particular. Most of the views expressed by developing countries on the TRIPS agreement arise from their interest in technological development.<sup>iv</sup>

The TRIPS agreement, which came into force on 1 January 1995, was one of the main achievements of the Uruguay Round of trade negotiations. The agreement represented an important step in efforts to harmonize intellectual property rules and establishing minimum standards for national laws. Most of the key elements of the intellectual property systems of the United States, European countries and Japan were similar and could be easily harmonized. But for developing countries the concerns go beyond harmonization and are largely about access to technology. Nations that generate technology have always sought to protect it while those that import it have pursued avenues that maximize access to the available technology. Nations seeking to develop technologically have often imitated and learned from those already posing the knowledge. For example, when “the United States was still a relatively young and developing country . . . it refused to respect international intellectual property rights on the grounds that it was freely entitled to foreign works to further its social and economic development”. The history of intellectual property protection in pharmaceutical products demonstrates this point. Many of the industrialized countries introduced patent legislation in this field after they had reached a certain level of technological competence and international competitiveness.<sup>v</sup>

Western countries and large corporations claim that strong IPRs are needed to maintain investment in innovation. This position is contrasted by new political and social movements, which assert that muscular IPRs enforcement hampers economic growth and welfare in developing countries. The article argues that both positions overemphasise what IPRs can actually do to promote or obstruct innovation. IPRs per se do not allow companies to appropriate the returns from their innovations unless they are matched to a wide-ranging strategy that includes continuous learning and dynamic innovation. There are substantial cross-industry differences in the role played by IPRs: while patents are quite significant in pharmaceuticals and copyright is important in the audio-visual industry, the majority of sectors are not seriously affected by either strong or weak IPR regimes. Western nations would better protect their well-being by focusing on promoting new knowledge and creativity rather than by impeding new entrants from accessing the know-how they have already generated.<sup>vi</sup>

### **SOCIAL AND ECONOMIC DEVELOPMENT IN RELATION TO IPRs**

Intellectual property comes in many forms. They can be in the form of books, music, designs, processes, marks, geographical indications or even data or information's used in industry or commerce. There is a trend that the scope and form of intellectual property will be further expanded in the future. Most objects involve in day to day life such as furniture, stationary, kitchenette, automobiles, computers, telecommunication equipment, etc. did not exist thousands of years ago. They are not natural objects but are made by man, the fruits of intellectual property. Intellectual property facilitates the wellbeing of human life and in many cases help human being lives longer. Intellectual property stirs interests among people concerned. It provides income and causes movement of all kinds of resources and therefore creates industry and commerce. The intellectual property has a very important role both in economic and social development of mankind. Intellectual property right has economical value like any other property. Economic return is the main factor in motivating further development of intellectual property. Laws are required to protect the intellectual property right from any illegal infringement. The holder of the intellectual property right is granted the exclusive right to exploit his intellectual property either by self-exploiting or by licensing to others for royalty.<sup>vii</sup>

### **IMPACT OF IPRs ON DEVELOPING COUNTRIES LIKE INDIA**

The global economy, including developed and developing nations alike, is becoming more innovation-driven—powered by knowledge, creativity, and technology, each of which is fundamentally supported by intellectual property (IP) and intellectual property rights (IPR) protections. And yet, over the past two decades, the policy debate over IP's role has come under an increasingly active and coordinated attack, driven by IPR skeptics and opponents hailing from a variety of academic and multilateral institutions, nongovernmental organizations (NGOs), and some developing nations and policymakers therein. Yet if the international community is going to maximize global innovation—something that is critical if we are to make faster progress on commonly shared global challenges such as climate change, disease prevention and treatment, and economic growth—we will need a stronger and more wide-ranging consensus on the importance of IP to every country throughout the world. To maximize the role intellectual property can play in enabling innovation across the world, the countries that best recognize the essential link between the two—including the United States, Commonwealth nations, European Union members, Japan, Korea, Singapore, and others—need to revise and amplify efforts to build out and strengthen the international framework of intellectual property rules, norms, and cooperation. A new way ahead is needed to overcome and move

beyond the status quo stalemate that defines the intellectual debate over IP in the global economy, which remains starkly and deeply divided along developed-developing country lines that were largely set 20 years ago with the signing of the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement at the World Trade Organization (WTO).<sup>viii</sup>

Nations that have not implemented—or do not enforce—robust intellectual property rights protections end up harming their economic development in at least three principle ways. First, they deter future innovative activity. Second, they discourage trade and foreign direct investment, which only hurts their own consumers and businesses, by both limiting their choices and inhibiting their enterprises' ability to access best-of-breed technologies that are vital to boosting domestic productivity. Third, in countries with weak IP protections, firms are forced to invest undue amounts of resources in protection rather than invention. Ironically, developing countries' own economic development opportunities and intellectual property development potential are inhibited by their own weak intellectual property protections. For instance, the lack of effective protection for intellectual property rights in China has limited the introduction of advanced technology and innovation investments by foreign companies, thereby reducing potential benefits to local innovation capacity.<sup>ix</sup> As Cavazos Cepeda et al. found in a case study of IPR protections in that economy, "China has made progress in strengthening the protection of intellectual property over the past two decades, as attested to by indicators such as the Patent Rights Index.... However, uncertainty around the protection of intellectual property [remains] an important deterrent for foreign as well as domestic firms engaging in R&D-related activities."<sup>x</sup>

## **INTELLECTUAL PROPERTY LAWS IN INDIA**

Intellectual property (IP) is a term referring to a brand, invention, design or other kind of creation, which a person or business has legal rights over. Almost all businesses own some form of IP, which could be a business asset. Common types of IP include<sup>xi</sup>:

- Copyright – this protects written or published works such as books, songs, films, web content and artistic works;
- Patents – this protects commercial inventions, for example, a new business product or process;
- Designs – this protects designs, such as drawings or computer models;
- Trademarks – this protects signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

IP can be either registered or unregistered.

### **Copyright**

India is a signatory to the Berne Convention on copyright. However, it may be a good idea to register your copyright as doing so may help to prove ownership if there are criminal proceedings against infringers. In most cases though, registration is not necessary to maintain a copyright infringement claim in India. Registration is made, in person or via a representative, with the Copyright Office. Since 2016, copyright policy was moved to India's Ministry of Commerce and Industry. All IPRs are now administered by the Department for Industrial Property and Promotion (DIPP). Internet piracy of films, music, games and software is an issue in India, as is unauthorised copying of physical books.

### **Patents**

India's Patents Act of 1970, 2003 Patent Rules and the 2016 Patent Amendment Rules set out the law concerning patents. As in the UK, there is no provision for utility model patents. The regulatory authority for patents is the Patent Registrar under the office of the Controller General of Patents, Designs and Trade Marks, which is part of India's Ministry of Commerce and Industry. Patents are valid for 20 years from the date of filing an application, subject to an annual renewal fee. India's patent law operates under the 'first to file' principle – that is, if two people apply for a patent on an identical invention, the first one to file the application will be awarded the patent.

### **Designs**

The laws governing designs are the Designs Act 2000 and the Designs Rules 2001. Designs are valid for a maximum of ten years, renewable for a further five years.

### **Trade marks**

India's trade mark laws consist of the 1999 Trade Marks Act and the Trade Marks Rules of 2002 and 2017. The regulatory authority for patents is the Controller General of Patents, Designs and Trade Marks under the Department of Industrial Policy and Promotion. The police now have more robust powers in enforcing trade mark law, including the ability to search premises and seize goods suspected of being counterfeit without a warrant. But these powers are tempered by the requirement for the police to seek the Trade Mark Registrar's opinion on the registration of the mark before taking any action. This adds to the delay and may result in counterfeit goods being removed or sold. Trade names also constitute a form of trade mark in India, with protection, irrespective of existing trade names, for those wishing to trade under their own surname. Because of the widespread practice of 'cybersquatting' – the registration in bad faith of marks by third parties registering domain names for certain well-known marks in order to sell them to the original rights owners – it is advisable for rights owners to register their domain names in India as trademarks as soon as possible. Registration takes up to two years. A trade mark in India is valid for ten years and can be renewed thereafter indefinitely for further ten-year periods.<sup>xii</sup>

## Geographical Indications

A Geographical Indication (GI) is utilized on goods with a specific geographical origin and it consists of qualities or reputation that are due to the place of origin. Rights in terms of GI are valuable and needs to be protected against misuse by dishonest commercial operators. The TRIPS agreement has listed out the minimum standards of protection of GIs and additional protection for wines and spirits. In view of this, India has adopted legislative measures by enacting the Geographical Indications of Goods (Registration and Protection) Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Rules, 2002. The Geographical Indications of Goods (Registration and Protection) Act, 1999, describes “Geographical Indication,” with respect to goods, as “an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.” The use of GIs in India is widespread as the indication can be seen in a variety of products such as Basmati Rice, Darjeeling Tea, Feni, Alphonso Mago, Allepey Green Cardamom, Coorg Cardamom, Kanchipuram Silk Saree, Kolhapur Chappal, and a host of other commodities. Entities registered with GIs can prevent unauthorized use of the registered geographical indication by initiating infringement procedures through a civil suit or criminal complaint.<sup>xiii</sup>

## Plant Varieties

As a part of the ratification of the TRIPS agreement, India has enacted the Protection of Plant Varieties and Farmers Act, 2001 (commonly known as the “Plant Act”), as per the recommendations of the International Union for Protection of New Varieties of Plants, Geneva. The Act has facilitated the creation of a Protection of Plant Varieties and Farmers Rights Authority. The body is entrusted with the task of promoting the development of new varieties of plants as well as the protection of plant varieties and the rights of the farmers and breeders. Till now, the Indian Government has notified 114 crops with their genera to be registered under the initiative. The development is set to sustain the progress of the most important sector of all – agriculture, as more emphasis will be attributed for discovering or developing new breeds. The scheme also seeks to enhance the growth of the seed industry and offer the Indian farmers with better quality of seeds.<sup>xiv</sup>

Violation of intellectual property rights, called “infringement” with respect to patents, copyright, and trademarks, and “misappropriation” with respect to trade secrets, may be a breach of civil law or criminal law, depending on the type of intellectual property involved, jurisdiction, and the nature of the action. As of 2011, trade in counterfeit copyrighted and trademarked works was a \$600 billion industry worldwide and accounted for 5–7% of global trade.<sup>xv</sup> In the current Russian invasion of Ukraine, IP has been considered in punishment of the aggressor,<sup>xvi</sup> as a method to prevent future wars of aggression with nuclear weapons, and new considerations for ‘secret patents’.<sup>xvii</sup>

## CONCLUSION

India despite being a developing country is taking steps against websites with pirated content. Despite positive steps taken in online copyright enforcements, such as “dynamic injunctions” for repeat offenders, copyright holders continue to report high levels of piracy, particularly online and through commercial broadcasts. This includes unauthorized file sharing of videogames, signal theft by cable operators, commercial scale photocopying, unauthorized reprints of academic books, and circumvention of Technology Protection Measures. While there has been some progress, weak enforcement of IP by the courts and police, a lack of familiarity with investigative techniques, and the absence of a centralized IP enforcement agency, combined with failure to coordinate actions on both the national and state level, threaten to undercut progress.

<sup>i</sup> Daniele Archibugi, “The Globalisation of Intellectual Property Rights: Four Learned Lessons and Four Theses”, Available at: <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1758-5899.2010.00019.x>

<sup>ii</sup> Ashmita Agrahari, Rupali Khanna, “The Globalization of Intellectual Property Rights and Innovation in Patent Protection” International Journal of Law, Management and Humanities Volume III, Issue III, 2020 p287-294.

<sup>iii</sup> National Academies of Sciences, Engineering, and Medicine. 1993. Global Dimensions of Intellectual Property Rights in Science and Technology. Washington, DC: The National Academies Press. <https://doi.org/10.17226/2054>.

<sup>iv</sup> The TRIPS agreement covers: copyright and related rights (including the rights of performers, producers of sound recordings and broadcasting organizations); trademarks including service marks; geographical indications including appellations of origin; industrial designs; patents including the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data.

<sup>v</sup> Calestous Juma, “Intellectual property rights and globalization: implications for developing countries” Available at: [https://www.iatp.org/sites/default/files/Intellectual\\_Property\\_Rights\\_and\\_Globalization.pdf](https://www.iatp.org/sites/default/files/Intellectual_Property_Rights_and_Globalization.pdf)

<sup>vi</sup> Supra note 1

<sup>vii</sup> Available at: <https://www.mofa.go.jp/policy/economy/apec/symposium/sympo0305/session1-3.pdf>

<sup>viii</sup> Stephen Ezell and Nigel Cory, “The Way Forward for Intellectual Property Internationally” Available at: <https://itif.org/publications/2019/04/25/way-forward-intellectual-property-internationally/>

<sup>ix</sup> Xiolan Fu, "Foreign Direct Investment, Absorptive Capacity and Regional Innovation Capabilities: Evidence from China," Oxford Development Studies 36, no1 (2008): 89-110.

<sup>x</sup> Cavazos Cepeda, Lippoldt, and Senft, Policy Complements, 27–28

<sup>xi</sup> Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1080487/IP-Rights-in-India.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1080487/IP-Rights-in-India.pdf)

<sup>xii</sup> *Ibid*

<sup>xiii</sup> Available at: <https://www.indiafilings.com/learn/intellectual-property-laws-in-india/>

<sup>xiv</sup> Available at: <https://www.legalserviceindia.com/legal/article-7213-ipr-law-in-india.html>

<sup>xv</sup> Miriam Bitton (2012) Rethinking the Anti-Counterfeiting Trade Agreement's Criminal Copyright Enforcement Measures the Journal of Criminal Law & Criminology 102(1):67–117

<sup>xvi</sup> Ranjan, Prabhash (2022-07-17). "Russia-Ukraine War and WTO's National Security Exception". Foreign Trade Review.

<sup>xvii</sup> Pearce, Joshua M. (2022). "Leveraging Intellectual Property to Prevent Nuclear War". *Safety*. 8 (3): 55.

