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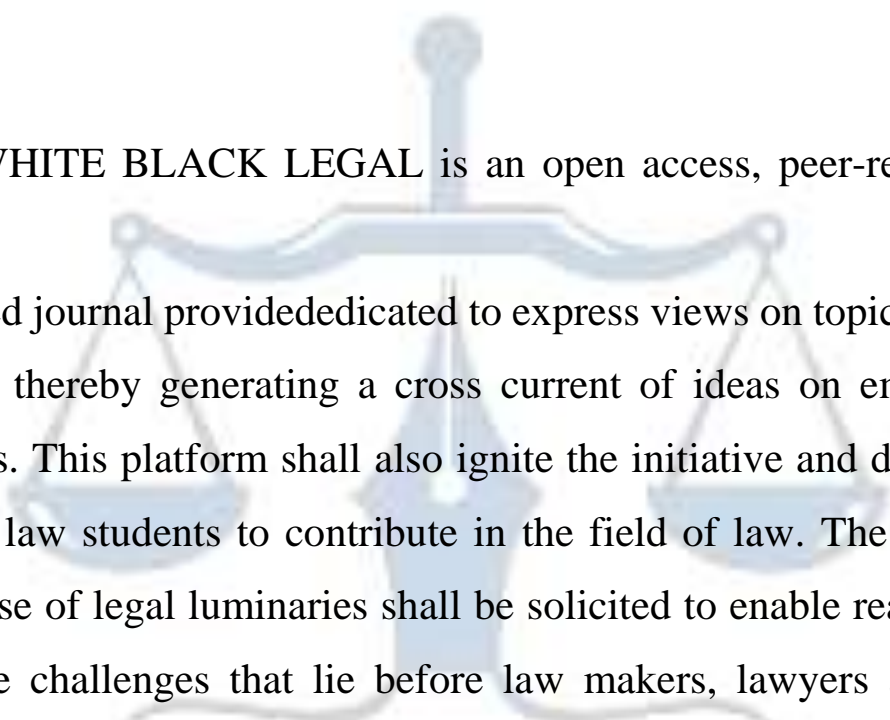


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INTELLECTUAL PROPERTY, CRIMINAL LAW, AND HUMAN RIGHTS

AUTHORED BY - DIBYANSHU PRADHAN

BACKGROUND:

Intellectual property law aims to protect the application of ideas, innovations, and information from commercial exploitation with the agreement of the right holders. Emerging new violations of intangible property have been brought about by the quick progress of technology. The civil law's protection seems to be insufficient and ineffectual in many areas when it comes to dealing with the increasing risk of serious economic infringements in the intellectual property sphere.

The idea that recognising and encouraging artists and inventors eventually helps society as a whole is a fundamental justification for the creation of patents and copyrights. This approach gives people or companies temporary exclusive rights to promote creativity and innovation. This encourages the development of new concepts, technologies, or creative works by innovators and artists, giving them more time, resources, and motivation to do so. A human rights approach to intellectual property clearly defines and highlights the natural balance that exists under intellectual property frameworks between the rights of creators and innovators and the larger interests of society.

Intellectual property (IP) law is recognised for its role in protecting the exclusive rights of IP owners and licensees, whereas criminal law has historically served as a tool to maintain public welfare by enforcing criminal sanctions for conduct that cause damage to society. However, various scholars argue that given the omnipresence and effect of IP breaches in modern times, particularly those that take the form of "counterfeiting" and "piracy," these offences either directly or indirectly jeopardise public safety. As a result, these academics contend that criminal law has developed into a useful tool for guaranteeing stricter protection of intellectual property, taking into account the wider social ramifications connected to such violations.

Through e-commerce platforms, unauthorised commodities can infiltrate supply chains and a

widerange of products, including weapons and mobile phones, before ending up in the hands of customers. According to several studies, the sale of these items that are infringing may cause financial losses as well as harm to the reputation of IP owners. A crucial aspect was emphasised in the 2010 Hargreaves report, which said that when IP rights are either disregarded or too expensive to uphold, their basic economic role in fostering innovation is jeopardised. Essentially, the fundamental idea of using intellectual property to encourage innovation is undermined by an inadequate system of rights, which is worse than having no rights at all.

Property rights in a variety of intellectual property are protected under the TRIPS agreement, including patents and copyrights, industrial designs, geographical indications, trademarks, and plant varieties. Copyrights and patents are especially important. Many scholars and activists have argued that intellectual property rights (IPRs) and human rights are incompatible both during and after the talks that resulted in the creation of this agreement. IPRs related to pharmaceuticals and plant types in particular have drawn criticism for perhaps endangering the fulfilment of basic human rights including the right to food, health, and even self-determination. The subject matter highlights the larger ramifications and moral issues related to the confluence of intellectual property rights and human rights, especially in areas that are vital to human survival and well-being. Criminalizing IP offences adds a layer of complexity, implicating individuals in legal processes traditionally reserved for more severe criminal acts.

There is evidence that the current dispute has made the already confused condition of discussion around human rights significantly more complex. Intellectual property rights (IPRs) are seen to clash with human rights; this misconception is either heightened by raising IPRs to the level of human rights or by emphasising this conflict in language. NGOs, business advocates, and other stakeholders have recently had many conversations impacted by these two points of view. To clarify the link between criminal law, human rights, and intellectual property rights, this research piece takes use of the current discussion. It aims to delve into the intricate dynamics between IPRs and the legal framework, shedding light on contemporary disputes surrounding these rights.

AIMS AND OBJECTIVES

The basic aim of this paper is to analyse the intricate dynamics between IPRs and the legal framework such as criminal law and explore the Human rights corner.

- To examine the legal framework and methods of intellectual property enforcement.
- To investigate the reasons for and effects of making intellectual property offences illegal.
- To investigate the applicability and significance of human rights concepts with criminal law and intellectual property.

LITERATURE REVIEW

This comprehensive research work took its ideas from “**The Relevance of Criminal Law in Intellectual Property Law Research**”¹ by Sharma, A. K., & Dube, D. (2021), “**Human Rights, Intellectual Property, and Struggles for Recognition**”² by Volker Heins, “**Human rights and Intellectual Property Rights: Need for a new perspective**”³ by Dr Philippe Cullet.

In this present research work, the relationship between the fields of criminal law and intellectual property (IP) law is a key area of focus, particularly when it comes to prosecuting offences. In addition to highlighting the challenges of depending only on civil law to protect intellectual property rights, the article looks at the controversial and much-debated idea of applying criminal law globally to address serious commercial IP infringements.

Particularly in the context of the second article, the considerable expansion of intellectual property rights (IPRs) and human rights standards in the last several decades has drawn attention to a detailed discussion. It brings the spotlight on the lack of agreement on how to define human rights, which causes conflicts between the IP rights of the group and the empowerment of the individual. The article also explores how property rights are simultaneously processed, especially in the area of intellectual property and have a major role in discussing its violation of human rights notion. It recognizes the disagreements over cultural dimensions and the polarising effects of globalised property rights, much as the discussions around human rights. The interplay between the growth of property rights and human rights raises important political and philosophical issues that need thoughtful consideration. It

¹ Sharma, A. K., & Dube, D. (2021). The Relevance of Criminal Law in Intellectual Property Law Research. <https://doi.org/10.1093/oso/9780198826743.003.0014>

² Heins, V. Human Rights, Intellectual Property, and Struggles for Recognition. *Hum Rights Rev* 9, 213–232 (2008). <https://doi.org/10.1007/s12142-007-0042-2>

³ “Human Rights and Intellectual Property Rights: Need for a new Perspective” by Dr Philippe Cullet [Human Rights and Intellectual Property Rights \(ielrc.org\)](https://www.ielrc.org/)

emphasises how crucial it is to understand these matters and warns against trivializing or oversimplifying human rights problems.

The third article delves into the intricate relationship between Traditional knowledge of IP rights and human rights, especially as it relates to the International Covenant on Economic, Social, and Cultural Rights (Covenant). A key piece of legislation, the Covenant, recognises rights to food and health that are affected by intellectual property laws in underdeveloped countries. Furthermore, Article 15(1)c, acknowledges the significance of rewarding intellectual achievements for the benefit of society. The fact that these incentives are not dependent on current intellectual property rights laws is noteworthy as it shows how inclusive the Covenant is in recognising a range of intellectual contributions, including traditional wisdom. It's interesting to note that rather than going into great detail about how intellectual property rights affect human rights, this new perspective focuses more attention on the rights of individual knowledge producers.

RESEARCH QUESTIONS:

- How do Intellectual property laws establish a threshold or criteria for Criminalization when a breach of intellectual property emerges?
- To what degree should infringement of Intellectual property be considered under the ambit of criminal offence and what human rights repercussions may arise from such criminalization?
- How do different governments incorporate considerations of Intellectual property enforcement systems into the safeguarding of human rights, especially in the context of criminal proceedings?
- How can legal frameworks effectively adapt to technological advancement ensuring that the Intellectual property laws promote and protect human rights?

RESEARCH METHODOLOGY

The present research study is mainly doctrinal and analytical. Keeping this in view, the researcher shall utilise the conventional method of using libraries consisting of primary sources and secondary sources like precedents, legislation, books, journals etc. respectively. Doctrinal methods for research have been adopted as it is not possible to study the subject by experimental method. From the collected material and information, the researcher proposes to conduct an in-

depth analysis of the topic of study.

SCHEME

With the above-stated Introduction, aims and objectives, and the doctrinal approach of study, the paper has been divided into four major chapters:

CHAPTER I: INTRODUCTION

CHAPTER II: THE SCOPE AND THE RELATION BETWEEN INTELLECTUAL PROPERTY AND CRIMINAL LAW

CHAPTER III: ROLE OF HUMAN RIGHTS IN INTELLECTUAL PROPERTY RIGHTS.

CHAPTER IV: COMPARATIVE ANALYSIS OF CRIMINALISING OF IP REGIME AND ITS IMPACT ON HUMAN RIGHTS DIMENSION

CHAPTER V: LEGAL FRAMEWORKS INCORPORATED BY NATIONS FOR IP MANAGEMENT

CHAPTER VI: CONCLUSION



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CHAPTER I

Introduction

Intellectual Property Rights (IPRs) encompass a collection of intangible assets, such as inventions, creations, and contributions to contemporary knowledge, that are owned and safeguarded by individuals or companies. This legal protection prevents unauthorized use or implementation by external entities without proper consent. The effective safeguarding of Intellectual Property Rights plays a pivotal role in fostering economic growth, providing financial incentives, and motivating advanced innovations. It requires well-informed, targeted, and regularly updated guidance within the realm of Intellectual Property Rights.

In the dynamic landscape of today's rapid technological, scientific, and medical advancements, intellectual property has become increasingly crucial. Furthermore, shifts in the global economic environment have significantly impacted business models, where intellectual property serves as a central element, establishing value and fostering potential growth.

In the Indian context, several new legislations have been enacted to protect intellectual property rights and align with international obligations, particularly under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These legislative measures reflect India's commitment to creating a robust framework for the protection and promotion of intellectual property, recognizing its importance in the context of global trade and innovation. As intellectual property continues to play a vital role in shaping innovation and economic development, staying attuned to these legal developments is essential for navigating the evolving landscape of Intellectual Property Rights.

At the core of this discussion lies the delicate balance between upholding individual freedoms and addressing criminal activities that jeopardize the very foundation of society. Human rights, as articulated in pivotal documents like the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, stand as foundational principles guiding justice, equality, and human dignity. Concurrently, the application of criminal law serves as a manifestation of state authority, seeking to prevent, investigate, and penalize actions that undermine these core principles. Striking a harmonious equilibrium between the safeguarding of human rights and the enforcement of criminal law remains an ongoing and complex challenge for legal systems globally, especially given the contemporary backdrop of

technological progress and globalization, which have blurred conventional boundaries.

The intricacies of this narrative extend further as we explore the domain of sanctions related to intellectual property rights. In a world propelled by innovation, creativity, and the exchange of ideas, the protection of intellectual property stands as a cornerstone of economic development. Intellectual property rights, inclusive of patents, copyrights, trademarks, and trade secrets, constitute the foundation upon which industries thrive and prosper. However, the pursuit of preserving these rights introduces a multifaceted interplay with human rights and criminal law. The enforcement mechanisms, including sanctions for intellectual property infringements, prompt considerations regarding the proportionality of the measures implemented and their potential impact on individual liberties.

In this evolving landscape, the challenge is to navigate the intricate intersections of human rights, criminal law, and intellectual property protection, ensuring that the pursuit of justice and innovation coexists with due regard for individual freedoms. The need for nuanced and balanced legal frameworks becomes increasingly apparent as societies grapple with the complexities arising from these interwoven considerations.

Furthermore, the global scope of intellectual property theft and infringement underscores the necessity for collaborative efforts transcending borders. This brings to the forefront a myriad of challenges related to jurisdiction, national sovereignty, and the harmonization of legal frameworks. As nations confront the complexities posed by cybercrime, piracy, and the unauthorized utilization of intellectual property, there is an escalating demand for effective legal mechanisms that not only combat criminal activities but also uphold human rights.

In delving into this intricate nexus of relationships, it is imperative to examine specific cases and instances where the convergence of human rights, criminal law, and intellectual property rights sanctions has led to legal, ethical, and diplomatic dilemmas. Instances such as the prosecution of individuals for online copyright infringement and the utilization of economic sanctions to address large-scale international intellectual property theft serve as tangible examples. These real-world scenarios underscore the intricate nature of the interwoven legal landscape and emphasize the need for thoughtful consideration of the implications on human rights, the ethical dimensions, and the diplomatic ramifications involved in addressing such

multifaceted challenges. As technology continues to advance, the complexities inherent in these intersections require a nuanced approach to ensure that legal responses remain effective, just, and respectful of fundamental human rights.

CHAPTER II

The Scope and the Relation between Intellectual Property and Criminal Law

Property rights and possession are governed by complex sets of laws that are crafted by legal systems all over the world. The dynamic interaction of socioeconomic, political, and technical elements is reflected in how these rules develop. The law gives a particular interpretation to the notion of property in order to accomplish the broader objectives of upholding justice, promoting economic growth, and keeping order.

Criminal law is often used as a last recourse when alternative approaches to resolving disputes have failed. Initially, when someone engages in anti-social behaviour, they could try to reason with the offender on a personal basis. After that, the group could apply a mix of rewards and penalties, perhaps going so far as to use tactics like exclusion. The criminal justice system may step in if the gravity of the situation justifies it. It provides a forum for the victim to pursue a formal settlement, which may include ordering the offender to stop their behaviour and, in certain situations, making restitution for previous injuries. Nevertheless, using criminal sanctions comes at a high cost to society. It calls for public resources and government engagement in order to ensure increased safety, and exact penalties, and serve as a deterrent for both the individual offender and possible future wrongdoers. As a result, the public is burdened with this expenditure as well as the government, which pays for increased safety and deterrents to criminal activity.

Criminal law has always been linked to offences involving the use of force against people or property. It may not be helpful to depend on logic or to assume that being shunned will be enough of a deterrent when one's life is directly in danger. Even while they may provide some compensation, monetary penalties could not be sufficient to cover the whole amount of injury. Society may not be able to rely on the prospect of financial penalties as a guarantee that the offender won't become a danger in the future.

Intellectual property (IP) rights can be upheld through legal avenues, employing either civil

litigation or criminal prosecution as means of enforcement. In the legal framework of India, procedures for both civil and criminal proceedings are delineated within its IP laws, along with provisions in the Competition Act. The legal landscape in India accommodates redressal mechanisms for infringements through civil courts and criminal prosecutions. However, it is noteworthy that criminal proceedings do not extend to cover infringements related to patents and designs, as outlined in the existing legal provisions. The nuanced approach to IP enforcement, encompassing both civil and criminal avenues, reflects the comprehensive legal mechanisms in place to address diverse aspects of intellectual property protection within the Indian legal system.

One drawback associated with pursuing civil litigation is the limited likelihood of securing substantial damages, and punitive measures against an infringing party are infrequently awarded. Despite these limitations, opting for civil litigation becomes advisable when there is a clearly identified infringer. This strategic choice is influenced by the potential issuance of an interim injunction, capable of immediately halting the infringement pending the final case resolution. Notably, damages are more routinely granted in cases involving copyright piracy and trademark infringement, which fall under the purview of criminal litigation, although this trend is less pronounced in patent-related disputes.

While civil litigation may pose challenges in terms of financial recovery, it serves as a valuable tool for halting ongoing infringements and seeking legal remedies. It is observed that copyright and trademark infringement cases, often tried through criminal litigation, tend to result in more frequent awards of damages. In contrast, patent cases may not consistently yield similar outcomes. Nevertheless, a positive trend has emerged over the years, demonstrating the Indian judiciary's impartiality in decisions favoring foreign companies over local infringers.

The initiation of criminal proceedings by the Indian Government adds another layer to the enforcement landscape. In most instances, these actions are prompted by complaints submitted to magistrates or law enforcement authorities by rights owners. Criminal proceedings carry the potential for more severe consequences, including substantial fines and imprisonment for infringers. This robust legal approach underscores the government's commitment to combating intellectual property violations and provides a more formidable deterrent against such offenses. The willingness of the judiciary to impose harsher remedies further emphasizes the gravity

with which India addresses intellectual property infringement, fostering an environment conducive to protecting the rights of innovators and creators.

Rights Granted To Various IP Owners

Individuals who endeavor to safeguard their intellectual property do so with the primary aim of preventing any disruptions in the utilization of their creations. Whether it be the architects of an invention, a distinctive mark, or a literary and creative work, these creators invest both financial resources and considerable time in the development of their intellectual property. Consequently, it is reasonable to assert that they should be accorded specific rights, ensuring they enjoy exclusive use of their inventions and have recourse to remedies in the event of infringement.

The rights conferred upon holders of patents, trademarks, and copyrights are designed to uphold the principles of intellectual property protection. Patent holders, for instance, are entitled to exclusive rights over their inventions, enabling them to control and benefit from the use of their innovative creations. Similarly, trademark holders enjoy exclusive rights to distinguish their goods or services, preventing unauthorized use that may cause confusion in the marketplace. Copyright holders, on the other hand, are granted exclusive rights to reproduce, distribute, and display their original works, thereby recognizing and rewarding the creative efforts of the authors.

This system of rights not only acknowledges the investment of resources and effort made by creators but also serves to incentivize innovation and creativity. By offering a legal framework that safeguards these exclusive rights, intellectual property laws contribute to fostering an environment where individuals are encouraged to explore new ideas, develop groundbreaking inventions, and contribute to the enrichment of cultural and economic landscapes. It is the recognition of these rights that establishes a fair and equitable balance between the interests of creators and the larger societal need for progress and cultural diversity.

Patent

Preserving an invention from unauthorized usage is paramount across all domains, and obtaining a patent stands as a pivotal measure in achieving this safeguard. A patent serves as a powerful tool by conferring exclusive rights upon the inventor, enabling them to exercise

control over the utilization of their creation. This exclusivity extends to the right to initiate legal proceedings against any party found using the invention without proper authorization.

In essence, a patent empowers its holder to prevent others from engaging in activities such as copying, manufacturing, selling, and importing the invention without explicit permission. The mere existence of a patent can act as a deterrent, dissuading potential infringers from attempting to exploit the invention. Should this prove insufficient, the patent holder retains the legal authority to take corrective action against those infringing on their intellectual property, including the pursuit of damages.⁴

Beyond the prevention of unauthorized usage, a patent opens up avenues for the inventor to leverage their creation. This includes the ability to sell the invention along with all associated intellectual property rights, granting licenses to others while maintaining ownership of the intellectual property, and engaging in discussions about the invention for the purpose of establishing a business centered around it.

Importantly, the public also reaps benefits from the patent system. The disclosure requirement mandates that the government publishes details of the invention after 18 months, offering the public valuable insights into technological advancements. Once the patent expires, this knowledge becomes accessible to everyone, contributing to the collective pool of information and fostering further innovation and development. In essence, the patent system not only protects inventors but also promotes the dissemination of knowledge and progress within society.

Patent Infringement

A legal action for the infringement of a patent must be initiated in either the District Court or the High Court, the choice depending on the pecuniary jurisdiction, within the geographical area where the cause of action arose.⁵ However, if a counterclaim for revocation is concurrently filed against the same, exclusive jurisdiction lies with the High Court to address the matter. The right to seek legal redress in enforcing a patent is granted to any individual holding a valid claim over the subject matter of the patent.

⁴ IPR protection and Infringement, <http://www.ipo.gov.uk/types/patent/p-about/p-benefit.htm>

⁵ Section 104 of the Patents Act, 1970

The remedies that a court can provide in a patent infringement lawsuit encompass the issuance of an injunction, subject to conditions deemed appropriate by the court. Additionally, the plaintiff has the discretion to choose between seeking damages or an account of profits. Furthermore, the court is empowered to direct the seizure, forfeiture, or destruction, without compensation, of infringing goods along with materials and implements primarily utilized in creating such infringing products. This discretionary power is exercised based on the specific circumstances of the case.

In essence, the legal framework not only affords patent holders the means to protect their intellectual property but also provides a range of remedies aimed at addressing the harm caused by patent infringement. The court's authority extends to taking measures that prevent further infringement, compensate the patent holder for losses incurred, and, when necessary, eradicate the infringing goods and associated materials. This comprehensive approach ensures that the legal system is equipped to deliver effective and proportionate justice in the realm of patent protection and enforcement.

Copyright

Copyright is a legal entitlement granted to creators of literary, dramatic, musical, and artistic works, as well as to producers of cinematograph films and sound recordings.⁶ Essentially, it constitutes a bundle of rights, encompassing, among others, the rights of reproduction, communication to the public, adaptation, and translation of the work. The sole criterion for determining eligibility for copyright protection is the originality of expression.⁷ The qualitative aspect or substance of a work is irrelevant in deciding whether it qualifies for copyright protection. For instance, a poorly designed web page can still be entitled to copyright protection if its layout, structure, or design is original.

An individual can hold copyright over all original works they create, as well as those generated by their employees during the course of employment. However, when work is commissioned or developed by third parties, the owner will secure copyright over such work only if there is a clear contract or agreement explicitly assigning such rights in favor of the owner. This underscores the importance of contractual arrangements in determining copyright ownership,

⁶ Section 14 of the Copyrights Act, 1957.

⁷ Agreement on Trade Related Aspects of Intellectual Property Rights

particularly when creative works are outsourced or developed with the involvement of external contributors.

Copyright serves as a vital mechanism that establishes essential safeguards for the rights of creators, ensuring the protection and acknowledgment of their creative works. This framework is crucial in nurturing and rewarding creativity, which serves as the cornerstone of progress. In any advanced society, the fundamental need to encourage creativity cannot be overlooked, as it plays a pivotal role in the economic and social development of a community. The shield provided by copyright to the endeavors of writers, artists, designers, dramatists, musicians, architects, and creators of sound recordings, cinematograph films, and computer software cultivates an environment that fosters creativity. This, in turn, not only motivates these creators to produce more but also inspires others to engage in creative pursuits.⁸

Copyright Infringement

Copyright infringement, also known as copyright violation, occurs when material protected by copyright law is used without authorization, violating one or more exclusive rights held by the copyright owner. These exclusive rights encompass activities such as reproducing, performing, or creating derivative works based on the copyrighted material. In the realm of electronic and audio-visual media, the unauthorized reproduction and distribution are sometimes termed as piracy.⁹

Instances of copyright infringement encompass reproducing the work in any tangible form, circulating copies of the work to the public beyond those already in circulation, incorporating the work into cinematographic films, creating adaptations of the work, publicly communicating the work, and engaging in acts that knowingly amount to copyright infringement. These prohibited acts also include making, selling, leasing, distributing, importing, or publicly displaying the infringed work.¹⁰

According to Section 63 of the Copyright Act, 1957, engaging in the deliberate infringement or aiding and abetting the infringement of copyright in any work is deemed a criminal offense. Individuals found guilty of such actions can face imprisonment and fines as punitive measures.

⁸ Agreement on Trade Related Aspects of Intellectual Property Rights

⁹ Protection of IPR Management (Copyrights)

¹⁰ Section 51 of The Copyright Act, 1957

In the case of *M/s. Knit Pro International vs. State of NCT of Delhi & Anr*¹¹, the Supreme Court ruled that Section 63 of the Copyright Act, which designates copyright infringement as a non-bailable offense, has significant implications. However, given the contemporary scenario where there is a growing lack of awareness about Intellectual Property Rights (IPR) among the general populace, the classification of Section 63 as a non-bailable offense raises concerns about potential misuse. This designation might not be entirely justified, as it could inadvertently become a tool for harassment, particularly affecting individuals who may be innocent but lack sufficient awareness of the complexities of intellectual property laws.

The broader societal context underscores the need for a nuanced approach to the enforcement of intellectual property regulations. It becomes imperative to balance the severity of legal consequences with the level of awareness and understanding prevalent in society. Designating Section 63 as a non-bailable offense may have unintended repercussions, potentially subjecting individuals, unaware of the intricacies of copyright law, to severe legal consequences. Therefore, a more measured approach in aligning legal provisions with public awareness and education about Intellectual Property Rights is essential to ensure that legal measures are just, proportionate, and effective in addressing copyright infringement while safeguarding the rights of the innocent.

Copyright Infringement Remedies

To initiate legal action for copyright infringement, one must file a lawsuit in either a District Court or a High Court, the choice contingent on the pecuniary jurisdiction, within the geographical area where the cause of action arose.

Copyright infringement constitutes a cognizable (non-bailable) offense, carrying penalties of imprisonment ranging from six months to three years or a fine ranging from fifty thousand to two lakhs. For subsequent convictions, the minimum imprisonment term has been increased to one year, extendable to three years, and the minimum fine is raised to one lakh, extendable to two lakh rupees. These represent the criminal remedies available to copyright holders for instances of copyright infringement.¹²

¹¹ Ms. Knit Pro International vs. State of NCT of Delhi & Anr. (Criminal Appeal No. 807 of 2022)

¹² Section 63 A of the Copyright Act, 1957

Under the copyright act, a police officer, not below the rank of a sub-inspector, is empowered to seize, without a warrant, all copies of the infringing work and all plates utilized in the creation of such infringing copies, presenting them before the magistrate.¹³

International Jurisprudence regarding criminal liability in IPR

The TRIPS Agreement does not explicitly address criminal liability for Intellectual Property Rights infringement, except in cases of counterfeit or piracy.¹⁴ In the United States, the 2013 Trademark Law outlines solely civil actions against alleged infringers. However, the Trademark Counterfeiting Act of 1984 introduces criminal penalties for intentionally trafficking in counterfeit goods. Section 506 of the U.S. Copyright Act establishes criminal liabilities for infringing copyright, with potential imprisonment for up to 10 years as a punishment. Similarly, the UK Trademarks Act and the UK Copyright Act include provisions for criminal liability concerning the making or dealing in infringing articles, with a potential punishment of up to 10 years of imprisonment.¹⁵

In Australia, Section 146 of the Trademarks Act 1995 imposes criminal liability for falsely applying a registered trademark, carrying a potential imprisonment term of up to 5 years or a fine. In Belgium, trademark infringement can result in criminal liability under sections 179 and 192 of the Belgium Criminal Code.¹⁶

Chapter 7 of the Copyright Act of 1996 in Finland establishes penal sanctions and liabilities to address copyright infringement under the Act.¹⁷ Article 48 of the Law of the Russian Federation on Copyright and Neighboring Rights stipulates that violations of copyrights and neighboring rights, as per this law, can lead to civil, criminal, or administrative consequences in accordance with the legislation of the Russian Federation.¹⁸ This implies that copyright violations in Finland may also result in criminal liabilities.

An examination of global legislations reveals a consistent imposition of criminal liability for infringing intellectual property rights, with some laws prescribing punishments of up to 10

¹³ Section 64 of the Copyright Act, 1957

¹⁴ Agreement on Trade Related Aspects of Intellectual Property Rights

¹⁵ UK Trademarks Act and the UK Copyright Act. <https://www.legislation.gov.au>

¹⁶ Belgium Criminal Code.

¹⁷ Belgium Criminal Code.

¹⁸ Law of Russian Federation on Copyright and Neighbouring Rights.

years. In contrast, Indian laws set a maximum imprisonment term of 3 years.

While criminal penalties may serve as a deterrent and contribute to reducing intellectual property crimes, the associated costs are substantial, potentially discouraging creativity and innovation. In my perspective, criminal penalties should be reserved for serious, indictable offenses related to intellectual property. This targeted approach ensures that the severity of consequences aligns with the gravity of the infringement, striking a balance between deterring illicit activities and fostering an environment conducive to creativity and innovation.

Impact on other Intellectual Properties

The Supreme Court's interpretation of the expression "may extend to three years" to mean an imprisonment term of three years sets a precedent that could potentially impact other laws concerning Intellectual Property Rights (IPRs) where a similar expression has been employed by the legislature to penalize offenders. Notable examples include Section 103 of the Trademarks Act, Section 39 of the Geographical Indications of Goods (Registration and Protection) Act, Section 72 of the Protection of Plant Varieties and Farmers' Rights Act, and Section 56 of the Semiconductor Integrated Circuits Layout-Design Act.

Under these provisions, individuals violating the stipulated regulations could face arrest without a warrant, and securing bail may become challenging, as the right to bail is no longer available for violations of such provisions. While there are currently no High Court judgments explicitly declaring these provisions (except for Section 103 of the Trademarks Act) as cognizable and non-bailable offenses, the precedent set by the Supreme Court could be invoked to declare these provisions as such. However, a critical question arises: Is it justifiable to categorize provisions related to Intellectual Property Rights as non-bailable and cognizable offenses?

This raises a significant point for consideration. While the intention behind imposing stringent measures may be to deter potential violators and safeguard intellectual property, the potential ramifications on individuals' rights and the broader innovation ecosystem must be carefully weighed. Striking a balance between protecting intellectual property and ensuring fair and proportionate legal processes is essential to maintain a conducive environment for creativity and innovation. Evaluating the justification for declaring such provisions as non-bailable and cognizable offenses should involve a comprehensive assessment of the potential impact on both

the enforcement of intellectual property rights and the rights of individuals accused of violations.

In my view, deeming provisions related to Intellectual Property Rights as non-bailable and cognizable offenses is neither justified nor reasonable. The primary concern lies in the interpretation of the expression "may extend to three years." This interpretation implies that even offenses carrying imprisonment terms as short as 7 months or 2 years could be classified as non-bailable and cognizable, contrary to the principles outlined in the Criminal Procedure Code (Cr.P.C.), where offenses with imprisonment durations less than three years are typically considered bailable.

This poses a potential risk of unjust situations. For instance, an individual engaging in the unauthorized sharing or downloading of copyrighted music, even for non-commercial purposes, may face arrest without the right to bail. Moreover, Section 63 of the Copyright Act allows for punishments of less than 6 months in situations where infringement is not conducted in the course of trade and business.

The Supreme Court's decision extends the classification of offenses as cognizable and non-bailable even in cases where the possibility of imprisonment for three years is absent. This means that law enforcement officials can make arrests without a warrant, restricting an individual's liberty. Importantly, the responsibility for determining whether an infringement under Section 63 falls within the scope of trade and business or not does not rest with the police officials. This potential infringement of personal liberty underscores the need for a more nuanced and balanced approach in defining the legal consequences for Intellectual Property Rights violations.

Additionally, designating offenses under Section 63 as non-bailable and cognizable undermines the scope of exemptions and limitations outlined in Section 52 of the Copyright Act. Law enforcement officials are not tasked with determining whether the alleged accused's use falls within the permissible bounds of Section 52. Their responsibility is solely to enforce the law, allowing for arrests without a warrant in cases of infringement under Section 63. This once again jeopardizes individual liberty, running contrary to the principles of the Indian Constitution that safeguard individual freedoms.

Furthermore, categorizing Intellectual Property Rights infringement as a non-bailable and cognizable offense goes against the fundamental objectives of Intellectual Property laws. Excessive enforcement can result in chilling effects, potentially hindering innovation. Copyright laws are designed to encourage creativity by safeguarding the rights of creators. However, overly stringent enforcement measures could have adverse effects on the spirit of innovation and creation, undermining the intended purpose of Intellectual Property laws.



CHAPTER III

Role of Human Rights in Intellectual Property Rights.

Human rights and intellectual property rights (IPR) have evolved separately throughout the years. Human rights are widely acknowledged by nations as essential rights because they are intrinsically vital to human life. By way of contrast, intellectual property rights are those legally recognised rights that are bestowed onto innovators and inventors in order to encourage their participation and facilitate technological breakthroughs.

Human rights and intellectual property rights, once distant and disconnected, are now forging increasingly intimate connections. For decades, these two domains evolved separately, existing in virtual isolation from each other. However, in recent years, international initiatives in standard-setting have ventured into unexplored intersections, mapping the complex relationships between intellectual property laws and human rights laws.¹⁹

Although the connection between these two fields has been evident in the Universal Declaration of Human Rights (UDHR), the foundational document in human rights law, recognizing and safeguarding the "moral and material interests" of authors in their "scientific, literary, or artistic production[s]" among its fundamental liberties. Additionally, the International Covenant on Economic, Social, and Cultural Rights (ICESCR)²⁰, ratified by nearly 150 nations, reinforces this linkage.

Historically, intellectual property remained relatively neglected within the human rights framework, often overshadowed by other rights in the eyes of treaty bodies, experts, and commentators. Major international intellectual property treaties such as the Paris and Berne Conventions and the TRIPS Agreement also notably lacked explicit references to human rights. This normative oversight persisted for years as intellectual property remained in the jurisprudential shadows while other rights took precedence.

The isolation between the realms of human rights and intellectual property rights was a consequence of both bodies being preoccupied with what they deemed more pressing concerns.

¹⁹ Laurence R. Helfer, *Human Rights and Intellectual Property: Conflict or Co-Existence?*, 5 *Minn. Intell. Prop. Rev.* 47 (2003)

²⁰ International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966, arts. 15(1)(b) & 15(1)(c),

In the post-World War II era, human rights law was primarily concerned with elaborating and codifying mechanisms for the protection and enhancement of human rights. Economic, social, and cultural rights, in particular, were not extensively developed during this period and only began receiving significant attention in the last decade.²¹

Simultaneously, advocates for Intellectual Property Rights (IPR) were focused on the gradual expansion of rights. This was achieved through periodic revisions to conventions such as Berne and Paris, with subsequent efforts linking intellectual property to trade. These initiatives marked a deliberate strategy to bolster the protection and promotion of intellectual property, contributing to the historical divergence between the two spheres.

Numerous catalysts have played a pivotal role in expanding the intersection between Human Rights and Intellectual Property regimes. Firstly, the evolution stems from the endeavours of industrialized nations to fortify their Intellectual Property Rights (IPR) and enhance protection standards. Initiated in the 1980s, these efforts resulted in the incorporation of these heightened protection measures and standards for intellectual property within the TRIPS Agreement of the World Trade Organization (WTO). Subsequent negotiations of regional and bilateral trade treaties further included Intellectual Property rules that surpassed the established TRIPS standards.

Secondly, shifts in human rights law, especially the recognition of the cultural rights of indigenous peoples, including the protection of traditional knowledge, have intensified the focus of the human rights system on the adverse consequences of the TRIPS Agreement. The acknowledgement of cultural rights has prompted a closer examination of how intellectual property rights impact indigenous communities, leading to an increased understanding of the potential conflicts between these rights and broader human rights principles.

International Instruments on Intellectual Property Rights and Human Rights

It is affirmed that the nexus between human rights and Intellectual Property Rights (IPR) is acknowledged by various United Nations human rights instruments. At the forefront of these

²¹ Theodor Meron, Norm Making and Supervision in International Human Rights: Reflections on Institutional Order, 76 AM. J. INT'L L. 754 (1982).

international instruments stands the Universal Declaration of Human Rights (UDHR) of 1948²². Within the UDHR, both Article 17 and Article 27 expressly recognize the right to own property. Article 17 articulates that every individual possesses the right to own property and shall not be subjected to arbitrary deprivation of such property. Expanding on this, Article 27 of the UDHR affirms that everyone has the right to enjoy the arts and participate in scientific advancements and their benefits.

Moreover, Article 27, clause 2, of the UDHR goes on to specify that everyone holds the right to the protection of the moral and material interests arising from any scientific, literary, or artistic production of which they are the author. This underscores the connection between the protection of intellectual property and the broader spectrum of human rights, emphasizing the importance of safeguarding the interests of creators and authors in various fields of knowledge and creativity.

Article 13 of the American Declaration of the Rights and Duties of Man also affirms the connection between human rights and intellectual property. This article states that every individual has the right to the protection of both moral and material interests concerning their inventions or any literary, scientific, or artistic works for which they are the author, thereby acknowledging intellectual property rights.

A parallel provision can be found in Article 15(1) of the UN International Covenant of Economic, Social and Cultural Rights (ICESR) of 1966, mirroring the sentiment expressed in the UDHR. Article 15(1) of the ICESR recognizes the right of everyone to participate in cultural life, enjoy the benefits of scientific progress and its applications, and receive protection for the moral and material interests arising from any scientific, literary, or artistic production of which they are the author. This reiterates the international acknowledgement of the importance of safeguarding intellectual property rights as an integral component of human rights, emphasizing the need to protect the interests of authors and creators across various domains.

In Europe, the recognition of the right to property as a fundamental human right dates back to

²² Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., pt. 1, art. 27, U.N. Doc. A/810 (1948).

theadoption of the first Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms²³. This acknowledgement signifies the establishment of a legal framework within which property right is safeguarded as an integral aspect of human rights in the European context.

The European Court of Human Rights has extensively examined Article 1 of the first Protocol, which asserts that "[e]very natural or legal person is entitled to the peaceful enjoyment of his possessions." This provision has been the subject of thorough analysis on numerous occasions, reinforcing its pivotal role in protecting the right to property within the European Convention of Human Rights. Going beyond this convention, the European Union has solidified its commitment to fundamental rights by incorporating them into the Charter of Fundamental Rights. This charter not only upholds the right to property but explicitly affirms that "Intellectual property shall be protected."

Moreover, the United States Constitution, in Article 1, Section 8, Clause 8, accentuates the nexus between human rights and intellectual property rights. It stresses the significance of advancing the progress of science and useful arts by granting exclusive rights for a limited duration to authors and inventors for their respective writings and discoveries.

These international instruments collectively recognize and reinforce the intricate connection between human rights and intellectual property rights. They underscore the importance of safeguarding the peaceful enjoyment of possessions, encompassing intellectual property, as a vital aspect of fundamental rights acknowledged not only at regional levels within Europe but also on a national scale, as exemplified by the United States Constitution. This acknowledgement emphasizes the profound significance of protecting intellectual creations and property rights in fostering societal progress and innovation.

Approaches to Intellectual Property Rights from a Human Rights Perspective

There are two predominant perspectives regarding the interaction between Human Rights and Intellectual Property Rights (IPR). The first approach characterizes their relationship as

²³ European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature, 4 Nov. 1950, 213 U.N.T.S. 221, Europ. T.S. No. 5 (entered into force 3 Sept. 1953);

inherently conflicting.²⁴ This viewpoint is evident in a United Nations Human Rights system resolution from the year 2000, which contends that "actual or potential conflicts exist between the implementation of the TRIPS Agreement and the realization of economic, social, and cultural rights." According to this perspective, robust intellectual property protection is seen as undermining and, consequently, incompatible with a broad array of human rights obligations, particularly within the realms of economic, social, and cultural rights.

The proponents of the "conflict" view posit that intellectual property rights are not fundamental human rights but rather instrumental legal tools designed to advance social and economic objectives. However, it's worth noting that the so-called "conflict" view could arguably be more accurately labelled as the "primacy of human rights" perspective. This is because, despite acknowledging potential conflicts, the consistent articulation of this viewpoint across various official reports and comments from diverse UN organizations in the past decade doesn't strictly assert that intellectual property rights cannot coexist with human rights. Rather, it emphasizes that regardless of the balance struck between private and public interests in intellectual property, "the primary objective and obligation of States is to promote and protect human rights."

In essence, this perspective underscores the overarching importance of human rights, positioning them as the primary consideration even in the realm of intellectual property. It stresses the imperative for states to prioritize the promotion and protection of human rights, suggesting that any compromise or balance struck should be in service of this fundamental objective.

The second perspective on the intersection of human rights and intellectual property perceives both legal domains as addressing a common fundamental question: determining the appropriate extent of private monopoly power. This power is designed to provide authors and inventors with adequate motivation to create and innovate, while simultaneously ensuring that the general public has sufficient access to the outcomes of their creative endeavours. Within the United Nations framework, various instruments, including statements from international sources such as the High Commissioner Report on the TRIPS Agreement, assert that "the balance between the public and private interests found under Article 15 of ICESR and Article 27 of UDHR – is

²⁴ Laurence R. Helfer, *Human Rights and Intellectual Property: Conflict or Coexistence?*, 5 *Minnesota Intellectual Property Rev.* 47,48 (2003).

one familiar to IPR."

This viewpoint considers human rights law and intellectual property law as fundamentally compatible, albeit with occasional disagreements on where the equilibrium should be struck between providing incentives for creators and ensuring accessibility for the wider public. The emphasis here is on recognizing the inherent synergy between these legal realms, aiming to find a harmonious balance that encourages innovation while safeguarding the broader societal interest in accessibility and benefit.

Medical Patents and Right to Health

In recent years, a highly contentious discourse has emerged, particularly regarding the implications of medical patents on the realization of the human right to health, especially in developing nations. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESR)²⁵ underscores the protection of the right to the "enjoyment of the highest attainable standard of physical and mental health," encompassing the provision of essential drugs within primary healthcare. Within this context, the right to health comprises two pivotal elements: the accessibility of medicines and their affordability.

Medical patents wield a direct influence on both aspects, significantly impacting the ability of individuals to access essential drugs. On one hand, they possess the potential to enhance accessibility by offering incentives for the development of new drugs. On the other hand, these patents also pose a potential impediment to access due to the comparatively elevated prices associated with patented drugs. The debate surrounding medical patents thus centers on finding a delicate balance that fosters innovation and drug development while concurrently addressing concerns about the accessibility and affordability of essential medications, particularly in the context of developing countries. In practical terms, several factors govern access to drugs, with pricing emerging as a crucial consideration. Notably, the cost of patented drugs is consistently higher than that of generic drugs, making it a significant factor affecting accessibility. Beyond pricing, access is also influenced by factors such as the level of competition among generic producers, local taxation policies, and additional mark-ups at various stages of the supply chain, including wholesaling, distribution, and dispensing.²⁶

²⁵ International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966

²⁶ Joint Report of the WHO, UNICEF, Sources and Prices of Selected Drugs and Diagnostics for People Living with HIV/ AIDS (2002)

Enhancing access to drugs necessitates a comprehensive approach that extends beyond mere price reduction through competitive dynamics. It entails adopting additional measures, such as the implementation of public subsidies or the introduction of price control mechanisms. By addressing a range of factors influencing drug accessibility, including both economic and regulatory considerations, a more holistic strategy can be developed to ensure that essential medications are not only affordable but also widely available to the population.

Improving access to drugs can be examined through the lenses of both medical patents and the right to health. The critical consideration lies in evaluating the realization of human rights based on the extent of implementation, especially among the most marginalized populations. The pivotal concern revolves around assessing not only whether particular nations can afford patent rights but, more importantly, whether the most economically disadvantaged individuals within any given country are poised to gain advantages from the introduction of medical patents. In essence, the focus is on ensuring that the benefits of medical advancements, particularly those protected by patents, extend equitably to the most vulnerable segments of society, transcending questions of national affordability.

Traditionally, intellectual property frameworks aimed to strike a balance between the rights of creators and the public's interests in accessing artistic works. The foundational justification for the existence of intellectual property rights was rooted in the belief that providing incentives and rewards to artists and inventors would ultimately yield societal benefits. However, contemporary developments are shifting this equilibrium, tilting the system towards a more limited spectrum of interests.

The landscape has evolved as commercialization has transformed intellectual property from a tool primarily designed to incentivize researchers and inventors into a mechanism focused on encouraging investment and safeguarding the resources of investors. This shift is evident in the privatization of the public domain, marking a departure from the original intent of intellectual property as a means of fostering innovation and creativity for the greater good.

Preserving the public domain is crucial because it serves as a wellspring for future creators and functions as the raw material for the marketplace of ideas. The transformation of intellectual property dynamics underscores the need to reevaluate and uphold the delicate balance between incentivizing innovation and ensuring broader access and utilization of knowledge and creative

works for the benefit of society at large.

The historical separation between human rights and Intellectual Property (IP) rights, particularly within the realm of patent law, has transformed into a progressive interconnection. Over several decades, these legal domains evolved independently, existing in relative isolation. However, recent years have witnessed a significant convergence, driven by numerous international standard-setting activities aimed at exploring the shared objectives of patent law and human rights law.

The global proliferation of Intellectual Property Rights (IPRs) has been facilitated by an inherent network of bilateral, regional, and multilateral treaties, as discussed earlier. The extensive use of intellectual property rights on a global scale has resulted in diverse impacts on human rights. Patents, integral to the field of intellectual property, attained global significance primarily in the 20th century. The spectrum of IPRs encompasses various rights, many of which are statutory and protected for differing durations.

In contrast, human rights encompass fundamental entitlements and freedoms inherent to all individuals, including the right to life and liberty, freedom of thought and expression, and equality before the law. These foundational standards are critical for ensuring dignified human existence. The ongoing intertwining of intellectual property and human rights signifies a nuanced interplay between legal frameworks, global treaties, and the broader societal implications arising from their convergence. This evolving relationship underscores the need for a thoughtful and balanced approach to navigating the intersection of intellectual property and human rights in a complex and interconnected world.

While discussions within the World Trade Organization (WTO) and World Intellectual Property Organization (WIPO) are expected to be contentious, negotiators in the realms of trade and intellectual property should not resist but rather embrace the idea of opening up these organizations to the influence of human rights. Allowing for a more significant presence of the human rights perspective in discussions related to intellectual property will not only enhance the legitimacy of these organizations but also facilitate the integration of a complex set of legal rules governing the same broad subject matter.

This integration will, in turn, provide greater opportunities for national and international

lawmakers as well as non-governmental organizations (NGOs) to address the crucial task of defining the interface between human rights and intellectual property. This can be achieved by establishing coherent, consistent, and balanced legal norms that contribute to the enhancement of both individual rights and the overall welfare of the global economy. Embracing the human rights influence in these discussions not only strengthens the credibility of the organizations involved but also sets the stage for a more harmonious and well-informed approach to addressing the intricate intersection of human rights and intellectual property on a global scale.



CHAPTER IV

Comparative Analysis of Criminalising of IP Regime and its Impact on Human Rights Dimension

Intellectual Property (IP) encompasses the products of human intellectual creativity, spanning inventions, literary and artistic expressions, designs, symbols, names, and images utilized in commercial contexts. The fundamental purpose of the IP regime is to establish legal safeguards for these intangible assets, nurturing an environment conducive to innovation and creativity. Simultaneously, it bestows creators with exclusive rights to their intellectual creations, acknowledging and incentivizing their contributions to various fields. The foundational types of IP, namely patents, copyrights, trademarks, and trade secrets, play distinctive roles in preserving and protecting diverse forms of intellectual creations, reflecting the multifaceted nature of humaningenuity.

The notion of Intellectual Property (IP) has historical origins that extend into ancient civilizations, where artisans, inventors, and creators endeavoured to secure acknowledgement and safeguarding for their innovative contributions. Nevertheless, the contemporary IP framework has undergone substantial evolution. The 19th and 20th centuries marked a pivotal period characterized by the inception of international conventions and treaties. Examples include the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property. These agreements played a foundational role in standardizing and aligning IP laws on a global scale, fostering a harmonized approach to intellectual property protection. This evolution reflects a dynamic response to the changing nature of creativity, innovation, and the increasing interconnectedness of the world.

The convergence of intellectual property (IP) frameworks and human rights has emerged as a central topic within legal and ethical discourse. The act of criminalizing offences related to intellectual property prompts a critical examination of the delicate equilibrium required to uphold both the imperatives of fostering innovation and preserving essential human rights. This analytical exploration aims to delve deeper into the ramifications associated with the criminalization of the IP regime, shedding light on its nuanced effects within the realm of human rights.

The intricate relationship between intellectual property and human rights has garnered

increased attention, emphasizing the need for a comprehensive understanding of the implications that arise when legal measures are taken to criminalize offences within the IP domain. Fundamental questions arise concerning the delicate balance required to simultaneously nurture inventive endeavours and safeguard the inherent rights essential to human dignity. In the ensuing comparative analysis, we embark on an exploration of the multifaceted dimensions surrounding the criminalization of intellectual property and its intricate interplay with the broader spectrum of human rights.

This examination is not merely an overview but an in-depth exploration of the consequences associated with the criminalization of intellectual property. The nuanced impact on the human rights dimension unfolds as a complex narrative, necessitating a thorough evaluation of the potential ramifications. It is within this context that we delve into the intricacies of how the criminalization of IP offences can influence, shape, or challenge the fundamental human rights that form the bedrock of a just and equitable legal framework.

The increasing prevalence of counterfeiting and piracy has brought heightened attention to the enforcement of intellectual property rights (IPRs). In response to perceived unprecedented levels of infringement, numerous initiatives advocating for stronger IPRs enforcement have emerged in recent years. Notable examples include calls from the Group of Eight (G8) nations urging intensified efforts in enforcing IPRs, the initiation of a World Trade Organization (WTO) dispute addressing China's IPRs enforcement regime, and the commencement of inter-governmental negotiations aimed at establishing an Anti-Counterfeiting Trade Agreement (ACTA)²⁷.

Moreover, the intellectual property (IP) chapters within free trade agreements (FTAs) negotiated in recent years have played a pivotal role in advancing IPRs enforcement. These agreements have introduced obligations that surpass the multilateral standards outlined in the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This signifies a concerted global effort to address the challenges posed by counterfeiting and piracy by establishing more robust and comprehensive frameworks for the protection of intellectual property.

²⁷ ICTSD Programme on Intellectual Property Rights and Sustainable Development

Economic assessments reveal that various forms of intellectual property (IP) infringement have distinct impacts on consumers, producers, and the overall economy. These differences in impact suggest that governments should prioritize their enforcement efforts, particularly targeting instances of deceptive trademark violations that pose health and safety hazards. Moreover, there's a compelling argument for directing enforcement actions toward producers rather than smaller-scale distributors of counterfeit goods, especially when these producers have ties to organized crime networks. Considering these variations is crucial for governments when formulating their strategies for enforcing intellectual property rights (IPRs). Such considerations can guide policymakers in effectively addressing the diverse challenges posed by IP infringement.

While intellectual property rights (IPRs) are inherently private, the role of governments in enforcing these rights is pivotal, and they wield significant influence over the extent of IPRs enforcement within their jurisdictions. Crafting an effective IPRs enforcement strategy requires governments to make informed choices regarding the allocation of resources, balancing efforts to combat piracy against enforcing other legal domains, constructing infrastructure like roads and bridges, and providing various public goods. This decision-making process becomes particularly challenging in developing nations where there is a pervasive underprovision of public goods, and enforcement challenges extend across multiple areas of law. In such contexts, determining the appropriate distribution of resources for IPRs enforcement becomes a complex undertaking, necessitating careful consideration of the broader socio-economic landscape.

Moreover, it is noteworthy that the majority of intellectual property rights (IPRs) holders in developing countries often hail from foreign origins. This implies that the immediate domestic welfare benefits derived from intensifying IPRs enforcement are likely to be constrained, except in cases where domestic consumers might face harm, as is evident with counterfeit pharmaceuticals. The rationale behind this limitation lies in the fact that the impetus for combating counterfeiting and piracy domestically becomes more pronounced only when a country attains a certain threshold level of income and experiences a more widespread ownership of domestic IPRs.

In essence, the short-term advantages of bolstered IPRs enforcement may be somewhat muted in developing nations, given the prevalence of foreign IPRs holders. The urgency to combat counterfeiting gains prominence primarily when the domestic ownership of intellectual

property attains critical mass, typically associated with increased economic prosperity. At this juncture, the domestic motivation to safeguard intellectual property rights strengthens, fostering a more robust commitment to addressing the challenges posed by counterfeiting and piracy within the country. These dynamics underscore the evolving nature of the relationship between economic development, domestic ownership of intellectual property, and the imperative to combat infringements.

Impact on Human Rights

The consequences of criminalizing the intellectual property (IP) regime resonate across a spectrum of intricate and interconnected issues, making it a complex and multifaceted challenge. A central concern within this discourse revolves around the potential for overreach, where the enforcement measures designed to protect IP rights inadvertently encroach upon individual freedoms. This concern materializes in scenarios where aggressive anti-piracy initiatives, aimed at curbing intellectual property violations, may inadvertently give rise to unwarranted surveillance practices, thereby jeopardizing the fundamental right to privacy²⁸.

In the pursuit of safeguarding intellectual property, governments and enforcement agencies might employ surveillance techniques that cast a broad net, often implicating individuals who are not necessarily engaged in malicious activities. Such overreach can manifest through invasive data collection, monitoring of online activities, and other forms of surveillance that extend beyond the targeted scope of IP enforcement. As a consequence, individuals find themselves subject to scrutiny without due cause, raising ethical and legal questions regarding the infringement of their right to privacy.

The right to privacy is a fundamental human right recognized internationally, and any encroachment upon it requires careful consideration. Aggressive IP enforcement measures that lead to unwarranted surveillance not only undermine privacy but also have the potential to erode trust in governmental and institutional practices. In the pursuit of protecting intellectual property, it becomes imperative to strike a delicate balance one that ensures the enforcement of IP rights without compromising the privacy and personal freedoms that individuals are entitled to.

²⁸ See *Halford v United Kingdom* (1997) 24 EHRR 523, *Copland v United Kingdom* (2007) 45 EHRR 37.

Preserving individual liberties within the context of criminalizing the IP regime is not merely a matter of ethical concern; it is fundamental to upholding a fair and just legal framework. A balance must be struck between the legitimate goals of protecting intellectual property and respecting the rights of individuals to engage in private, lawful activities without unnecessary intrusion. This equilibrium is crucial not only to maintain public trust but also to prevent the unintended consequences of eroding civil liberties in the name of enforcing IP laws.

In essence, the complexity lies in navigating the fine line between protecting intellectual property and safeguarding individual liberties. A thoughtful and measured approach to the criminalization of IP offences is essential, incorporating safeguards and checks to prevent unwarranted intrusions into private lives. By doing so, societies can ensure that the pursuit of innovation and the protection of intellectual property rights co-exists harmoniously with the preservation of fundamental human rights, creating a legal framework that is both fair and just.

The criminalization of intellectual property (IP) offences introduces a significant dimension of concern related to the fundamental right of freedom of expression²⁹. The broad scope inherent in intellectual property rights poses a potential threat to creativity and the unrestricted exchange of ideas. There is a legitimate apprehension that an overly expansive approach to enforcement might hamper the free flow of information and hinder the growth of a vibrant public domain. Thus, it becomes crucial to carefully evaluate the potential chilling effect on freedom of expression before contemplating the criminalization of IP offences.

Expanding on this, the expansive nature of intellectual property rights implies that strict enforcement measures, particularly through criminalization, could inadvertently create a stifling environment for creativity. Such measures may inadvertently restrict the sharing of ideas and information, hindering the dynamic interplay essential for innovation and the evolution of a thriving public domain. Striking a balance between the protection of intellectual property and the preservation of freedom of expression is paramount, ensuring that the enforcement framework does not inadvertently curtail the open exchange of thoughts, opinions, and knowledge.

In navigating this delicate balance, policymakers must be mindful of the potential ramifications

²⁹ European Convention on Human Rights [ECHR] article. 10

of criminalizing IP offences on the broader landscape of freedom of expression. An overly aggressive approach may lead to unintended consequences, limiting the diversity of perspectives and hindering the democratic flow of information. Therefore, a nuanced and comprehensive assessment of the interplay between intellectual property rights and freedom of expression is essential to develop enforcement measures that effectively safeguard innovation without unduly impinging on the democratic principles of open discourse and the sharing of ideas.



CHAPTER IV

Legal Frameworks Incorporated by Nations for IP Management

Examining prominent textbooks that delve into the concept of 'International Intellectual Property,' a prevalent understanding emerges: this legal domain primarily revolves around treaties, various instruments, and international organizations or affiliated institutions established by sovereign states to safeguard intellectual property (IP). Its core focus encompasses copyright, trademark, and patent protection within frameworks such as the Berne Convention and the Paris Convention, as well as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the dispute resolution mechanisms of the World Trade Organization (WTO). Additionally, it involves institutions like the World Intellectual Property Organization (WIPO) and the WTO, showcasing the international dimension of IP governance.

Furthermore, this field may encompass international filing systems, exemplified by the Patent Cooperation Treaty (PCT) and the Madrid Agreement for the global registration of trademarks.³⁰ In essence, the realm of International Intellectual Property encapsulates a multifaceted framework of legal agreements, organizational structures, and international mechanisms collectively designed to uphold and regulate intellectual property rights on a global scale.

Approaching intellectual property (IP) from an international law perspective involves examining the instruments and institutions established by states to regulate the cross-border utilization of IP. Despite the fact that IP rights are essentially private rights granted under domestic law, there arises a pertinent question about the truly international nature of this regulation. In the realm of IP, the framework of public international law primarily finds expression in treaties negotiated among states. These treaties serve to prevent discrimination against foreign IP owners, streamline the process of registering IP rights beyond national borders, and establish minimum standards for the protection and enforcement that such owners should be entitled to worldwide.

It is crucial to recognize that, even within this international context, the fundamental concept of the territoriality of IP rights remains unchanged. These treaties, while shaping a global

³⁰ Berne Convention for the Protection of Literary and Artistic Works, 9 September 1886, as revised at Paris on 24 July 1971 and amended in 1979 S. Treaty Doc. No. 99-27 (1986); Paris Convention for the Protection of Industrial Property, 20 March 1888, as revised at the Stockholm Revision Conference

framework of standards that state parties commit to implementing in their domestic laws, do not alter the intrinsic nature of IP rights as private legal entitlements. Furthermore, the relations between an IP owner and those using the protected subject matter continue to be governed by private law principles³¹.

In essence, the role of these treaties is to provide a global blueprint of standards that states are obligated to incorporate into their domestic legal systems as a matter of public international law. However, the crux of IP protection and enforcement continues to rely fundamentally on domestic private law. The effectiveness of international treaty rules in this regard often depends on whether they are designed to be self-executing and can be directly applied within national legal frameworks. This nuanced interplay between international and domestic legal spheres underscores the intricate balance that defines the regulation of intellectual property across borders.

In situations where countries authorize their courts or intellectual property offices to directly apply international IP norms, this invariably occurs through a domestic perspective. For instance, when assessing the criteria outlined in Article 6 of the Paris Convention to determine the threshold for recognizing a trademark as well-known in the country where protection is sought, the application of international IP norms is filtered through the lens of domestic legal considerations. Simultaneously, national courts, while interpreting and implementing their own domestic IP statutes, may occasionally take into account and seek guidance from public international treaties on intellectual property. Despite this, they frequently shape their own interpretations of the relevant treaty rules, tailoring them to align with their perspectives and the particulars of the case at hand.³² This dual process underscores the intricate interplay between international norms and domestic legal frameworks, wherein the latter inevitably influences the application and interpretation of the former.

In certain instances, the approaches taken by domestic jurisdictions directly conflict with the interpretations reached by World Trade Organization (WTO) Panels in establishing the inaugural multilateral dispute settlement system applicable to intellectual property (IP) treaties. While the clarification of treaty terms and the enforcement of compliance through WTO

³¹ Instances of intellectual property treaty provisions that possess self-executing capabilities and, consequently, can be meaningfully directly applied include the national treatment clauses embedded in the majority of IP treaties.

³² Art. 30 of the TRIPS Agreement;

dispute settlement mechanisms could potentially shift the focus of the system towards an international perspective, the number of decisions in the IP context remains relatively limited, amounting to only a few.³³

A noteworthy development in this landscape is the emergence of a new hybrid mechanism: 'private actions' initiated by investors who own intellectual property against host states under Investor- State dispute settlement (ISDS). This innovative approach might eventually address the existing gaps that WTO dispute settlement has not covered thus far. The introduction of this alternative form of international IP protection not only results in a growing number of adjudicative decisions related to IP but also suggests that the global enforcement of awards may prove to be more effective compared to the bilateral nature of counter-measures under the Dispute Settlement Understanding (DSU).

In essence, the evolving dynamics of international IP protection underscore the complexities of enforcement mechanisms, with the potential for hybrid systems such as ISDS to play a crucial role in filling the existing gaps and ensuring more effective global enforcement.

Except for investment protection, which stands out as a relatively recent addition to the intellectual property (IP) landscape, all indications emphasize the pivotal role of domestic legal frameworks.³⁴ This underscores the notion that IP rights are fundamentally 'private rights,' serving as central reference points that public international law rules on IP must acknowledge and adapt to. The design of public international law approaches to IP inherently reflects the core principles of territoriality and the private law nature intrinsic to IP protection.

In delving into international IP law as a facet of public international law, it becomes apparent that the subject is marked by intricacy. This complexity is evident in the intricate interplay between public and private realms, as well as the dynamic relationship between the domestic and the international levels. Public international law perspectives on IP research must navigate these complexities, recognizing the inherent interfaces between public and private interests and the nuanced connections between domestic and international dimensions. Understanding the complexities of this multifaceted subject is essential for comprehending the

³³ For a list of WTO TRIPS disputes, see Disputes by Agreement, World Trade Org. (WTO), https://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.html

³⁴ See Preamble of the TRIPS Agreement

evolving landscape of international intellectual property law within the broader framework of public international law.

Intellectual property emerges as a cornerstone for driving economic development, operating on both microeconomic and macroeconomic fronts. At the microeconomic level, the protection afforded by patents, copyrights, and similar intellectual property measures becomes instrumental. These mechanisms provide innovators and investors with a means to recover the substantial investments of time and capital required to bring innovative products to market. By granting exclusive rights to creators, the intellectual property framework ensures that their efforts are rewarded, fostering a conducive environment for continued innovation and creativity.

Zooming out to the macroeconomic perspective, the impact of intellectual property on economic development becomes even more pronounced. Intellectual property acts as a catalyst, stimulating domestic innovation and serving as a magnet for foreign direct investment. The prospect of safeguarding intellectual creations encourages both local and international entities to invest in research and development activities, propelling technological advancements and economic growth.

Access To Technology

Sustainable economic growth over the long term is predominantly driven by technological advancements. The patent system, serving as a vast and publicly accessible repository of technological knowledge, stands as a pivotal contributor to this progress, providing a wealth of information not easily accessible through other technical literature. A robust intellectual property framework further acts as a catalyst for foreign direct investment (FDI), presenting a crucial avenue for gaining access to private-sector technology.³⁵

In a comprehensive study commissioned by the World Bank, firms across six manufacturing industries were surveyed to gauge the influence of intellectual property protection on their investment decisions. The findings revealed that the impact of intellectual property protection on foreign direct investment decisions varied across industries and types of investments. However, across all sectors and investment types, a significant number of firms acknowledged

³⁵ Studies of U.S. patents have found that approximately 80 percent contain technical information not published elsewhere. Patent Depository Library Program, <http://www.uspto.gov/web/offices/ac/ido/ptdl/patreaso.html>.

that intellectual property protection played a substantial role in shaping their decisions regarding where to invest.

Furthermore, the significance of intellectual property protection was notably higher for industries characterized by advanced technology and for investments with the greatest potential for technology transfer. This underscores the critical role of intellectual property safeguards, particularly in high-technology sectors, where the protection of innovative ideas and technological advancements becomes a decisive factor in attracting and directing investments.

In essence, a resilient intellectual property system not only fosters technological innovation by maintaining a repository of knowledge through patents but also acts as a catalyst for economic development through the facilitation of foreign direct investment. The study's insights emphasize the pervasive impact of intellectual property protection across various industries, particularly in sectors with a high-tech focus, where it becomes a linchpin for fostering innovation, attracting investments, and driving the transfer of cutting-edge technology.

Promotion Of Private Sector Growth

An indispensable component for fostering economic development involves having legal mechanisms in place to thwart dishonest and deceptive practices, coupled with effective remedies for addressing such malpractices. The absence of such protective measures hampers economic growth by impeding sales, as consumers become more cautious in their purchasing decisions when lacking confidence in merchants and assurances of recourse if the goods do not meet expectations. Moreover, the dearth of protective measures poses challenges in establishing new businesses, as skeptical consumers are hesitant to take a chance on unfamiliar vendors.

In a market where unfair competition prevails, characterized by acts such as trademark infringement, passing off goods as those of another, or making false disparagements of competitors, merchants encounter difficulties in building a reputation for honesty and quality. This, in turn, limits their ability to expand their businesses. Establishing trust and credibility becomes particularly challenging when dishonest practices are allowed to persist, hindering the growth potential of businesses and eroding consumer confidence in the marketplace.

In essence, a legal framework that effectively curbs dishonest practices is vital for economic development, as it not only safeguards consumers but also creates an environment conducive

to the establishment and growth of businesses. Such legal protections are essential not only for preventing unfair competition but also for nurturing a marketplace where trust, integrity, and quality are upheld, fostering the conditions necessary for sustained economic advancement.

Consequences Of Weak Intellectual Property Protection

Governments in developing nations frequently encounter challenges in rationalizing the allocation of resources towards enhancing their intellectual property systems, often perceiving such efforts as primarily advantageous to foreign entities. The proliferation of copyright piracy and trademark counterfeiting is often tolerated under the assumption that these are minor transgressions against affluent multinational corporations capable of absorbing the losses easily. Some may even justify these acts on the grounds of necessity, citing the limited financial resources of consumers in developing countries. However, such an approach overlooks significant implications for both consumers and the broader economy.

By neglecting the importance of strengthening intellectual property systems, governments risk undermining the interests of their own citizens and the overall economic well-being. Permitting copyright piracy and trademark counterfeiting can have far-reaching consequences, negatively impacting consumers who may unknowingly purchase substandard or unsafe products. Moreover, the economy as a whole may suffer as the absence of robust intellectual property protection discourages innovation and investment, hindering the development of domestic industries.

In essence, a myopic perspective that downplays the significance of bolstering intellectual property systems in developing countries overlooks the potential adverse effects on both consumers and the broader economic landscape. A more comprehensive approach is essential to balance the interests of domestic consumers, foster economic growth, and create an environment conducive to innovation and development within these nations.

One of the most evident demonstrations of the detrimental impact of unethical practices is observed in the realm of trademark counterfeiting, where both the distinctive mark and the packaging of a product are illicitly replicated. Predictably, counterfeit goods are typically of substandard quality, and, in certain instances, they may pose a direct threat to consumers by being potentially harmful. The genuine manufacturer of the authentic product may only become aware of the existence of counterfeit items when consumers, deceived into believing they are

purchasing genuine products, raise complaints after experiencing disappointment. In such scenarios, the legitimate producer not only suffers financial losses due to sales diverted to counterfeiters but also experiences damage to its business reputation. Consumers, misled by counterfeit products, face economic losses and, in severe cases, are at risk of sustaining life-threatening injuries as a consequence of using substandard and fraudulent merchandise.

Benefits Of Stronger Intellectual Property Protection

While the repercussions of lacking adequate and effective intellectual property protection are significant, there are substantial advantages to be gained by implementing robust protection measures. When businesses feel assured that risks are manageable, their willingness to invest internationally increases. An essential role of the intellectual property system lies in establishing a legal framework that facilitates the active participation of developing countries in the economic activities of more developed nations, enabling them to share in the overall prosperity. One avenue to achieve this is through the franchise system, which offers small business owners a proven business method along with the advantages of an established and internationally recognized brand.

Furthermore, fortifying the intellectual property system can enhance the capacity of developing countries to promote the export of the goods they manufacture. By fostering an environment that safeguards intellectual property, nations can bolster confidence among businesses, both domestic and foreign, leading to increased investments and a more vibrant export sector. This, in turn, contributes to economic growth, job creation, and the overall development of these countries.

In essence, the benefits of instituting robust intellectual property protection extend beyond mere legal frameworks. They serve as catalysts for international investment, economic integration, and the promotion of exports, ultimately contributing to the overall advancement and prosperity of developing nations.

Concerns of Developing Countries in the Intellectual Property Discourse.

While recognizing the crucial role of intellectual property in fostering economic growth and development, numerous developing nations harbour apprehensions regarding the potential impact of heightened protection on their interests. These concerns stem from the fear that

increased protection measures could lead to elevated prices and provide foreign entities with the opportunity to exploit the economic benefits associated with indigenous knowledge or biological resources. Developing countries are wary of potential adverse consequences that may arise from the strengthening of intellectual property rights, particularly in terms of economic accessibility and the preservation of their unique cultural and natural assets.

Intellectual Property And Prices

The primary impediment to implementing more robust intellectual property laws often stems from concerns that embracing such protection will lead to higher prices, particularly in the case of medicines. While it is true that new products, whether patented or not, maybe more expensive due to advancements in technology, the introduction of patent protection itself does not necessarily cause a surge in prices.³⁶ A study commissioned by a consortium of research-based pharmaceutical companies revealed that adopting patent protection for pharmaceutical products did not result in increased pharmaceutical prices in the countries examined.

This outcome is unsurprising since patents have a prospective application, meaning that products already available on the market remain unaffected by the introduction of patent law. In most countries, over 90 percent of the legitimate drugs in circulation are off-patent pharmaceuticals. When a new product is introduced, it does not replace existing options but rather expands the choices available to consumers. If the new product offers advantages over other items, consumers may be willing to pay a higher price for the added benefits. Alternatively, they may choose to continue using existing, unpatented alternatives. This underscores the nuanced dynamics involved in the relationship between patent protection and pricing, emphasizing that the introduction of patents does not automatically equate to an across-the-board increase in product prices.

The assertion that intellectual property will lead to heightened prices is frequently put forth as a rationale for allowing the sale of generic drugs. The argument posits that manufacturers of generic products, unencumbered by the need to recoup initial research and development investments, can offer their products at a lower cost. It is crucial to recognize that generic products operate within the confines of a patent system, and in countries with robust patent protection, a thriving generic drug industry often coexists alongside research-based

³⁶ Uruguay Round Agreements Act, 19 U.S.C. Sec. 3581

pharmaceutical companies.

It is imperative to exercise caution in distinguishing this scenario from situations where there is a failure to provide patent protection, effectively rendering all products as "generic," or from the sale of infringing products. The coexistence of generic and research-based pharmaceutical industries within a strong patent protection framework underscores the nuanced dynamics of intellectual property and its impact on pricing. The key distinction lies in how a well-functioning patent system facilitates competition, allowing generic alternatives to emerge legitimately alongside patented products, and fostering affordability and accessibility in the pharmaceutical market.

The issue at hand is not inherently rooted in the patent system itself. In many sub-Saharan African countries, there are no patents on AIDS drug products, yet high rates of HIV infection persist. This indicates that the presence or absence of patents alone does not significantly impact the prevalence of HIV. In nations where AIDS drug products are patented, various factors such as the level of development, price controls, and government policies exert more substantial influence on pricing and access to these essential medications. Moreover, several measures have been implemented to ensure that intellectual property does not serve as a hindrance to access.

Pharmaceutical firms holding patents in sub-Saharan Africa have undertaken proactive steps to address this issue. These initiatives include offering their products at or below cost, providing royalty-free licenses to generic manufacturers, or choosing not to enforce their patent rights on AIDS drugs³⁷. Additionally, World Trade Organization (WTO) Members have collectively agreed on measures intended to facilitate access in countries lacking the capacity to manufacture pharmaceutical products. These collective efforts underscore a commitment to mitigating the impact of intellectual property barriers and prioritizing access to vital medications, particularly in regions facing significant health challenges like HIV/AIDS.

Indigenous Knowledge And Natural Resources

An additional objection often raised pertains to the possibility that developed-country interests may exploit the intellectual property system to deny a developing country the economic benefits derived from its own resources. Developing nations express particular concern

³⁷ Patents on Anti-Retroviral Drugs in Africa, www.cptech.org/ip/health/africa/jama-patents-table.html.

regarding practices such as "bioprospecting," where foreign entities obtain samples of biological materials for the purpose of creating patentable products. Additionally, there is apprehension about patents for innovations built upon indigenous knowledge. The concern is fueled by instances of foreign patents being granted for naturally occurring products with well-known uses in the developing countries, especially for medicinal purposes.

The crux of this concern lies in the fear that a patent could impede the continued utilization of technology deeply ingrained in the culture of the developing country for centuries. It is essential to note that this situation is unlikely to transpire solely based on a foreign patent, as patents have jurisdiction only in the country where they are granted. Nevertheless, reports of foreign patents being issued for products with established uses in developing countries amplify the worry that such patents could potentially restrict access to traditional technologies deeply rooted in the cultural fabric of these societies. This concern underscores the need for a nuanced approach to intellectual property, ensuring that it does not inadvertently curtail the longstanding cultural practices and access to resources in developing nations.³⁸

In certain instances, patents have been granted for technological advancements that represent genuine improvements built upon traditional knowledge. This aligns with the intended purpose of the patent system. However, in other cases, there is evidence of individuals filing patent applications, claiming to have invented a technology that, in reality, was not their creation but derived from others. This includes instances where the technology was neither novel nor new but already well-known. While patent applications undergo scrutiny for novelty during examination, the effectiveness of this process is contingent upon the available information accessible to the examiner.³⁹

Challenging such patents through legal means can be a resource-intensive and time-consuming endeavour. A more proactive and effective approach involves minimizing the likelihood of such occurrences. This can be achieved through a straightforward measure, ensuring that "traditional knowledge" forms an integral part of the information consulted by patent examiners. Integrating traditional knowledge into the examination process not only guards

³⁸ Some points to be considered by potential franchisees are discussed by the British Franchise Association at www.whichfranchise.com/feature_template.cfm?FeatureID=50.

³⁹ Edwin Mansfield. 1998. Intellectual Property Rights, Technological Change, and Economic Growth. In Intellectual Property Rights and Capital Formation in the Next Decade,

against unwarranted patent claims but also serves as a potential area for technical assistance. This approach contributes to the preservation of the integrity of the patent system and ensures that patents are granted appropriately, fostering a fair and equitable innovation landscape.⁴⁰



⁴⁰ Intellectual Property and Developing Countries, Nathan Associates Inc. TCB Project, 446296.pdf

CHAPTER V

Conclusion

It is crucial to understand that the interaction among Intellectual Property Rights (IPR), Criminal Law, and Human Rights unfolds as an intricate interplay at the confluence of legal, economic, and ethical dimensions. This intricate relationship mirrors the ever-evolving challenges and prospects inherent in the dual pursuit of safeguarding intellectual property and respecting individual rights, all within the delicate equilibrium of justice. Conclusively, an examination of this subject emphasizes the imperative for an astute and well-balanced strategy, one that acknowledges the valid concerns of creators, maintains adherence to legal principles, and ensures the protection of fundamental human rights.

Fundamentally, the essence of intellectual property revolves around encouraging innovation and creativity by granting creators exclusive rights to their intellectual pursuits. Yet, as societies grapple with the changing dynamics of technology, globalization, and information accessibility, concerns about enforcing intellectual property using criminal law and its implications on human rights take center stage. Achieving the appropriate equilibrium between safeguarding intellectual property and upholding individual rights stands out as a significant challenge for legal systems across the globe.

The application of criminal law to enforce intellectual property rights introduces a facet of government intervention and punitive measures, prompting concerns about the appropriateness of such actions and the adherence to due process. Detractors argue that an excessively forceful approach to enforcement may result in privacy breaches, limitations on freedom of expression, and constraints on fair use. Specifically, the utilization of criminal sanctions against activities like copyright infringement has sparked apprehensions about the potential criminalization of individuals engaged in non-commercial pursuits, potentially stifling creativity and impeding the unrestricted dissemination of information.

Conversely, a robust defence of intellectual property is viewed as indispensable for cultivating innovation, stimulating economic growth, and advancing the formation of a knowledge-driven society. In the absence of effective mechanisms to shield intellectual property, the motivation for creators to invest their time, energy, and resources in pioneering innovations dwindles. Consequently, this decline in incentives could hinder societal progress and deprive

communities of the advantages derived from technological breakthroughs, artistic expressions, and scientific revelations. The delicate balance between safeguarding intellectual property through legal means and avoiding undue restrictions on individual freedoms is thus a pivotal consideration in the ongoing discourse on the intersection of criminal law, intellectual property, and societal progress.

Central to the discourse is the examination of how the enforcement of intellectual property impacts access to crucial goods and services, particularly in critical sectors like healthcare and education. Achieving a delicate equilibrium that facilitates access to essential medicines, educational materials, and technological advancements while upholding intellectual property rights poses a significant challenge. The global community has grappled extensively with these challenges, notably in the context of ensuring affordable medicines in developing nations and managing potential conflicts between intellectual property and the fundamental right to health.

Within this intricate landscape, international bodies, governments, and legal systems are confronted with the demanding task of aligning their policies with human rights principles. Initiatives like the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) have aimed to establish a framework that harmonizes intellectual property protection with the imperative of safeguarding the right to health. Nevertheless, persistent challenges necessitate continuous endeavours to address disparities and ensure that intellectual property frameworks actively contribute to, rather than hinder, the realization of human rights.

In summary, the relationship between Intellectual Property Rights, Criminal Law, and Human Rights demands a deliberate and all-encompassing strategy. Achieving a delicate equilibrium that safeguards creators' interests, nurtures innovation, and preserves fundamental human rights calls for ongoing discourse, international collaboration, and a dedication to adapting legal frameworks to meet the evolving needs of society. The challenge lies in establishing an atmosphere where intellectual property is both revered and shielded without compromising the principles of justice, privacy, and fair access to knowledge and innovation.

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