

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS: AN EXAMINATION OF INTERNATIONAL LEGAL FRAMEWORKS

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ABSTRACT

This paper explores the complex world of international intellectual property rights. It delves into the legal protection of intangible assets, including patents, copyrights, and trademarks, highlighting their importance in today's economy and culture. The discussion revolves around the philosophical concept of property as a bundle of rights, emphasizing the role of knowledge, scarcity, and utility in valuing intellectual property. Additionally, the paper addresses the need for a delicate balance between individual rights and the common good, showcasing how international legal regimes aim to achieve fairness, innovation, and widespread access to creativity. Understanding these principles is crucial in navigating the intricate landscape of intellectual property protection on a global scale.

Keywords: Intellectual property rights, Intangible assets, Patents, Copyrights, International legal regimes

INTRODUCTION

Intellectual property, in its broadest sense, refers to a category of intangible assets and creations resulting from human intellectual and creative efforts. These creations can take various forms, such as inventions, artistic works, literary works, symbols, and even business processes. Intellectual property rights are legal protections that grant creators and innovators exclusive rights to their creations or inventions, allowing them to control how these creations are used, reproduced, and distributed. The philosophical aspects of intellectual property laws delve into the fundamental concepts of ownership, possession, and the rights associated with property. These aspects are essential for understanding the legal regimes and the broader implications of intellectual property

protection.¹⁰² The concept of property is a multifaceted and intricate one, encompassing a diverse range of meanings and concepts. At its core, property, in a legal context, represents a complex bundle of rights that stem from the notions of ownership and possession. According to legal scholar Salmond, the right to property can be distilled as the right to the comprehensive use of things.¹⁰³ This definition implies that ownership, in general, is a permanent and inheritable state, and these rights can pertain to both tangible and intangible assets.

Property rights over tangible assets, such as land and chattels, are commonly referred to as corporeal property.¹⁰⁴ In contrast, rights over

¹⁰² Matthew P Harrington, 'Rethinking "In Rem": The Supreme Court's New (And Misguided) Approach to Civil Forfeiture' (1994) 12 Yale Law & Policy Review 281.

¹⁰³ *ibid.*

¹⁰⁴ *ibid.*

intangible assets, like ideas, works of art, and literature, fall under the category of incorporeal property. Examples of incorporeal property rights include patents, copyrights, and trademarks. In everyday language, the term "property" often denotes the physical, material objects we possess, while in a strictly legal sense, it refers to the rights over property that are established and governed by the law. Expanding into the realm of human rights, Article 12 recognizes property rights as an essential aspect of human existence.¹⁰⁵ Property, in this context, represents an inherent right of individuals, acknowledging their ability to own and control assets and resources. Intellectual property, a distinct subset of property rights, encompasses creations of the human mind. This domain includes various forms of protection offered by legal regimes such as patents, copyrights, trademarks, and trade secrets.¹⁰⁶ Additionally, it extends to allied areas like the safeguarding of plant varieties and databases, encompassing a broad spectrum of forms and legal frameworks. Intellectual property underscores the significance of novelty.¹⁰⁷ It demands that to receive protection, an intellectual creation must exhibit a certain level of uniqueness. However, it is crucial to note that intellectual property doesn't concern itself with abstract ideas but rather with their tangible manifestations.

For instance, patent law safeguards rights like manufacturing and distribution, which pertain to concrete embodiments of innovative ideas, rather than the ideas themselves. Similarly, copyright law extends protection to the publication and distribution of creative works, focusing on the physical manifestations of these artistic expressions. The philosophical foundations and ideas that underpin intellectual property laws:

¹⁰⁵ Ashwani Kumar Bansal, 'Public Interest in Intellectual Property Laws' (2013) 55 *Journal of the Indian Law Institute* 476.

¹⁰⁶ Sayed Qudrat Hashimy and Emmanuel Elimhoo Kimey, 'Protection of Digital Contents under Indian Copyright Law in the Light of International Conventions' (2022) 5 *International Journal of Law Management and Humanities* 1302.

¹⁰⁷ Sayed Qudrat Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (2022) 4 *Indian Journal of Law and Legal Research* 1.

1. Property as a Bundle of Rights

In the legal context, property is often described as a "bundle of rights." This concept signifies that ownership of property entails a collection of rights and privileges, which can include the right to use, possess, transfer, and exclude others from the property. Intellectual property, despite its intangible nature, also embodies these rights.¹⁰⁸

2. Scarcity and Value

Property, whether tangible or intellectual, is often associated with scarcity. Scarcity implies that resources, including intellectual creations, are limited. The value of property depends not only on its material existence but also on the knowledge and utility associated with it. For example, a diamond can be valued for its physical properties, precision when cut and shaped, and its utility in various industries, like cutting tools. This multifaceted nature of value complicates the concept of property.¹⁰⁹

3. Knowledge of Use

Intellectual property is uniquely tied to knowledge and use. The value of intellectual creations often hinges on their utility, innovation, and the knowledge they represent. This aspect introduces complexity into the concept of property, as knowledge is fluid and continually evolving.¹¹⁰

4. Property Law and Distributive Justice

Property law has evolved to incorporate elements of distributive justice. While property rights grant owners certain privileges, they are not absolute. Conflicting rights, such as the right to property and the right of access to others, must be balanced. For instance, a patent holder's ownership right is balanced with the

¹⁰⁸ James Bacchus, 'An Unnecessary Proposal: A WTO Waiver of Intellectual Property Rights for COVID-19 Vaccines' (Cato Institute 2020) <<https://www.jstor.org/stable/resrep27669>> accessed 2 September 2023.

¹⁰⁹ Samtani Anil, 'Non-Traditional Trade Marks: A Singapore Perspective' (2008) 3 *Journal of Intellectual Property Law & Practice* 180.

¹¹⁰ Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 7).

public's right to access and use the patented invention.¹¹¹

5. Conflicting Rights

Conflicts between property rights are common. In some cases, the absolute property rights of one person may interfere with the property or personal rights of another. For instance, property disputes can arise when the rights of neighboring property owners clash, leading to legal disputes over land use, noise, or other issues.¹¹²

6. Reasonable Restrictions

Property rights are not unlimited. Governments may impose reasonable restrictions on property rights to serve the broader public interest. For example, laws that require landowners to allow access to public roads or utilities serve a public purpose and may limit a property owner's rights in some contexts.

7. Balancing Act

Intellectual property laws, such as patents, copyrights, and trademarks, seek to strike a balance between rewarding creators and fostering innovation while ensuring access and public benefit. Courts and legislatures often consider the public interest when defining the scope and limitations of intellectual property rights.

Thus, the philosophical aspects of intellectual property laws are deeply intertwined with concepts of ownership, scarcity, value, and the delicate balance between individual property rights and the common good. Intellectual property rights are not absolute but are subject to reasonable limitations to promote fairness, innovation, and access to knowledge and creativity for the benefit of society as a whole.

¹¹¹ Wendy Bishop and David Starkey, 'Copyright and Intellectual Property', *Keywords in Creative Writing* (University Press of Colorado 2006) <<https://www.jstor.org/stable/j.ctt4cgr61.16>> accessed 27 August 2023.

¹¹² Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 7).

TYPES OF INTELLECTUAL PROPERTY:

Patents

Patents are granted for new inventions or discoveries, giving the inventor exclusive rights to use, make, and sell the invention for a certain period (usually 20 years). This protection is granted in exchange for disclosing the invention to the public.

Copyright

Copyright protects original literary, artistic, and musical works, granting authors or creators the exclusive right to reproduce, distribute, and adapt their works. Copyright protection typically lasts for the life of the author plus 50 to 70 years.¹¹³

Trademarks

Trademarks protect distinctive symbols, logos, names, and slogans that distinguish products or services.¹¹⁴ Trademark holders have exclusive rights to use these identifiers in connection with their goods or services.

Trade Secrets

Trade secrets encompass confidential business information, such as manufacturing processes, formulas, and customer lists. Protection of trade secrets relies on maintaining their secrecy within a business.¹¹⁵

JUSTIFICATIONS FOR INTELLECTUAL PROPERTY

Labour Justification

This perspective, influenced by thinkers like John Locke, argues that intellectual property is a reward for the effort and labor invested in creating something new.¹¹⁶ It is based on the idea that people should be motivated to create

¹¹³ Hashimy and Kimey (n 6) 312.

¹¹⁴ Sonya Abrego, 'From Cattle Brand to Corporate Brand: Blue Jean Trademarks in Mid-Century America' (2021) 34 *Journal of Design History* 116.

¹¹⁵ Getachew Mengistie Alemu, 'Strategic Use of Branding for Competitiveness: The Rationale for Branding and Marketing Agricultural Products of African Countries' (2019) 1 *Journal of Fair Trade* 6.

¹¹⁶ Christopher Buccafusco, 'A Theory of Copyright Authorship' (2016) 102 *Virginia Law Review* 1229.

by the promise of benefiting from their creations.¹¹⁷

Value Added Theory

This theory posits that intellectual property rights are justified by the social value added by labor.¹¹⁸ In the case of intellectual property, this could mean that new ideas or innovations contribute to the progress of society, making protection essential.

Personality Justification

This perspective emphasizes that intellectual property reflects the personality and identity of the creator. It argues that protecting intellectual property is essential for preserving the individual's dignity, expression, and recognition.¹¹⁹

Max Theory

Max Weber's perspective sees property, including intellectual property, as a form of social and economic control¹²⁰. In a capitalist society, intellectual property rights may primarily serve the interests of the ruling class by controlling access to valuable resources.

CONSTITUTIONAL ASPECTS OF INTELLECTUAL PROPERTY

In some countries, intellectual property rights are safeguarded through constitutional provisions. For example:

Art. 31A: This article protects legislation that may involve the acquisition of property rights, including intellectual property, even if it infringes on other fundamental rights outlined in the constitution.

Art. 31B: This article limits challenges to laws based on alleged violations of fundamental rights. The courts may assess the validity of such laws, taking into account the broader public interest.

¹¹⁷ Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 7).

¹¹⁸ Buccafusco (n 16).

¹¹⁹ *ibid*.

¹²⁰ M Suresh Benjamin and Sayed Quadrat Hashimy, 'The Fourth World Tussle for Recognition of Rights under International Law: A cursory Glance' (2023) 6 International Journal of Law Management and Humanities 13.

In essence, intellectual property is a multifaceted concept that combines legal protections, philosophical justifications, and constitutional considerations. It plays a crucial role in incentivizing creativity and innovation while also raising complex questions about the balance between private ownership and the public interest.

THE INTERNATIONAL PREMIER OF INTELLECTUAL PROPERTY RIGHTS

The International Premier of Intellectual Property Rights encompasses a complex framework governed by the World Intellectual Property Organization (WIPO) and various international agreements.

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

1. WIPO's Organizational Structure:

The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations dedicated to promoting intellectual property rights globally. WIPO's structure includes several key organs:

General Assembly

Comprising all states party to the WIPO Convention that are also members of related Unions, this assembly meets biennially and holds the highest authority among all WIPO organs.

Conference

Comprising states party to the WIPO Convention that are also members of any of the Unions, the conference meets biennially to discuss matters of general interest in the field of intellectual property and establish WIPO's legal assistance program and budget.¹²¹

Coordination Committee

This committee convenes annually and is composed of executive committee members from the Paris and Berne Unions or both.

¹²¹ Sayed Quadrat Hashimy, 'Impact of WTO Agreement Accession on Trade and a Few Intellectual Property Rights in Afghanistan' (University of Mysore 2021).

International Bureau

Located in Geneva, the International Bureau serves as the administrative hub of WIPO and supports various governing bodies of WIPO and the Unions. In 2002, it had a staff of 859 people from 86 different countries, led by a director-general.

Financing of WIPO

WIPO stands out among UN organizations because it largely sustains itself through its activities. Approximately 90% of its budget in 2006–2007, totalling CHF 531 million (USD 440 million), came from fees generated by international trademark registrations and patent applications. The remaining 10% of the budget was covered by fees for arbitration and mediation services, publications, and contributions from member states.¹²²

Membership and Decision-Making

WIPO consists of 184 member states, and it operates on a "one country, one vote" basis.¹²³ The General Assembly, convening annually, oversees WIPO's activities, including budget allocation and decision-making. Several specialized committees address substantive issues related to intellectual property.

CHALLENGES WITHIN THE WIPO SYSTEM

1. Disparity in Influence:

Despite the equal voting system, wealthy countries, particularly the United States and Europe, often hold more sway and set the agenda at WIPO, creating a perception of inequality among member states.

2. Emphasis on Private Interests

Intellectual property rights have sometimes taken precedence as an end in themselves at WIPO, overshadowing the organization's broader mission to promote the global public interest.

3. Lack of Transparency

Many decisions within WIPO are made behind closed doors, which can lead to concerns about transparency, especially regarding technical assistance programs.

4. Diplomacy-Centric

Delegates representing member states are often career diplomats who rotate in and out of Geneva, leading to diplomatic-style negotiations that may not always align with the organization's mission.¹²⁴

Therefore, WIPO plays a crucial role in safeguarding and promoting intellectual property rights on a global scale. However, challenges related to influence, transparency, and the balance between private and public interests are areas that continue to evolve and shape the organization's effectiveness in the complex world of intellectual property rights. WIPO's mission remains focused on fostering innovation and creativity for the economic, social, and cultural development of all nations through an effective international intellectual property system.

INTERNATIONAL CONVENTIONS

International conventions for the protection of intellectual property rights have played a pivotal role in fostering global cooperation and safeguarding the creative and innovative works of individuals and organizations.

Paris Convention (1883)

The Paris Convention for the Protection of Industrial Property marked a historic milestone in the realm of intellectual property rights. This international agreement represented the first concerted effort to assist creators in ensuring the protection of their intellectual works in foreign countries. The need for such international protection became evident when foreign exhibitors hesitated to participate in the 1873 International Exhibition of Inventions in

¹²² *ibid.*

¹²³ *ibid.* 55.

¹²⁴ Sayed Qudrat Hashimy, *Comparative Perspectives on Public and Private Laws - A Student Handbook* (Institute of Legal Education 2023).

Vienna, Austria, fearing that their ideas would be pilfered and exploited elsewhere. The Paris Convention primarily caters to inventors (patents), trademarks, and industrial designs.¹²⁵

Berne Convention (1886)

The Berne Convention for the Protection of Literary and Artistic Works was established to provide creators with the rights to control and receive compensation for their creative works on an international scale. This convention covers a wide range of artistic and literary works, including novels, short stories, poems, plays, songs, operas, musical compositions, sonatas, as well as drawings, paintings, sculptures, and architectural creations.

Madrid Agreement (1891)

The adoption of the Madrid Agreement marked the inception of the first international intellectual property filing service, known as the Madrid System for the International Registration of Marks. Over the ensuing decades, a comprehensive array of international intellectual property services would emerge under the auspices of what would later evolve into the World Intellectual Property Organization (WIPO).¹²⁶

BIRPI Establishment (1893)

The two secretariats responsible for administering the Paris and Berne Conventions merged to create WIPO's immediate predecessor, the United International Bureaux for the Protection of Intellectual Property, commonly known by its French acronym, BIRPI.

WIPO Establishment (1970)

The convention that established the World Intellectual Property Organization (WIPO) came into force, leading to the transformation of BIRPI into WIPO. The newly formed WIPO became an intergovernmental organization led by member

states, with its headquarters situated in Geneva, Switzerland.¹²⁷

WIPO Joins the UN (1974)

WIPO's significance was further elevated when it joined the United Nations family of organizations, becoming a specialized agency of the UN. All member states of the United Nations were entitled to, though not obliged to, become members of specialized agencies like WIPO.¹²⁸

These international conventions and the subsequent establishment of WIPO have played a critical role in harmonizing and enhancing the protection of intellectual property rights on a global scale. They have fostered collaboration among nations and provided creators and inventors with the confidence that their intellectual creations would be safeguarded and respected internationally, contributing to the advancement of innovation, creativity, and cultural exchange worldwide.

THE TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement is widely considered one of the most significant and comprehensive international agreements concerning intellectual property rights.¹²⁹ Enforced by member countries of the World Trade Organization (WTO), this agreement covers various forms of intellectual property, including patents, copyrights, trademarks, geographical indications, industrial designs, trade secrets, and exclusionary rights over new plant varieties. It officially came into effect on January 1, 1995, and is binding on all WTO member states.¹³⁰

¹²⁵ Sayed Quadrat Hashimy, 'The Doctrine of Copyright Exhaustion in Software Under Indian Copyright Act: A cursory Glance' (2022) 4 Indian Journal of Law and Legal Research 1.

¹²⁶ Stanley M Besen and Leo J Raskind, 'An Introduction to the Law and Economics of Intellectual Property' (1991) 5 The Journal of Economic Perspectives 3.

¹²⁷ Hashimy, 'The Doctrine of Copyright Exhaustion in Software Under Indian Copyright Act' (n 25).

¹²⁸ Hashimy and Kimey (n 6).

¹²⁹ Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 7).

¹³⁰ Violet Atkinson and others, 'A Comparative Study of Fashion and IP: Trade Marks in Europe and Australia' (2018) 13 Journal of Intellectual Property Law & Practice 194.

The TRIPS Agreement, established in 1994 as a result of the Uruguay Round of Multilateral Trade Negotiations, serves three key objectives. First, it aims to level the global trade playing field by reducing disparities in intellectual property rights protection among nations, thereby diminishing distortions and impediments to international commerce.¹³¹ Second, it strives to guarantee effective and adequate safeguarding of intellectual property rights like copyrights, trademarks, patents, and trade secrets across member countries. Third, it seeks to strike a balance between protecting these rights and ensuring that measures related to their enforcement don't hinder legitimate trade. This comprehensive agreement consists of seven parts encompassing 73 articles.¹³² Part II of the TRIPS Agreement sets the minimum standards for the protection of various forms of intellectual property, such as trademarks, copyrights, and patents, while also addressing anti-competitive practices in contractual licenses. It defines the types of signs eligible for trademark and service mark protection and outlines obligations related to their use, licensing, and prevention of misuse.¹³³ Additionally, the agreement extends a higher level of protection to geographical indications for wines and spirits. The roots of trademark law trace back to the industrial revolution when distinguishing products in competitive markets necessitated trademarks and service marks. In India, trademark legislation began with the Indian Merchandise Marks Act of 1889, evolving through subsequent acts like the Trade Marks Act of 1940 and the Trade and Merchandise Marks Act of 1958. In alignment with international standards, India enacted the Trademarks Act of 1999 in response to global developments, which came into force in 2003. Furthermore, India's participation in the Paris

Convention for the Protection of Industrial Property in 1883 underscored its commitment to international intellectual property protection standards.¹³⁴

Importance of Intellectual Property in India

India has recognized the significance of intellectual property rights at all levels, including statutory, administrative, and judicial. The TRIPS Agreement, which came into force in India on January 1, 1995, plays a crucial role in setting international standards for the protection and enforcement of intellectual property rights.¹³⁵ India is committed to ensuring effective and adequate protection of these rights, aiming to reduce distortions and impediments to international trade.

Key Aspects of the TRIPS Agreement

Patents

The TRIPS Agreement sets out the minimum standards for patent protection in member countries. It states that inventions in all areas of technology, whether products or processes, can be patented if they meet the criteria of novelty, inventive step, and industrial applicability.

Copyright

The agreement addresses copyright protection for literary and artistic works, aligning with international norms. India's Copyright Act, 1957, as amended in 1999, reflects the Berne Convention on Copyright, to which India is a party. It also extends protection to performers' rights.

Geographical Indications

The TRIPS Agreement obliges parties to provide legal means to prevent the misleading use of geographical indications that suggest the origin of a good other than its true place of origin. India has its own legislation, the Geographical

¹³¹ Sayed Qudrat Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (2022) 4 Indian Journal of Law and Legal Research.

¹³² Bradley J Condon, 'China—Intellectual Property Rights and the Criminalization of Trade Mark Counterfeiting and Copyright Piracy under the TRIPS Agreement' (2009) 4 Journal of Intellectual Property Law & Practice 618.

¹³³ Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 31).

¹³⁴ Hashimy, 'The Doctrine of Copyright Exhaustion in Software Under Indian Copyright Act' (n 25).

¹³⁵ Simon Klopschinski, 'The WTOs DSU Article 23 as Guiding Principle for the Systemic Interpretation of International Investment Agreements in the Light of TRIPS' (2016) 19 Journal of International Economic Law 211.

Indications of Goods (Registration and Protection) Act, 1999, to protect such indications.

Industrial Designs

Industrial designs refer to the ornamental or formal appearance of a product. The TRIPS Agreement establishes minimum standards for the protection of industrial designs, which are integral to intellectual property rights.

PHARMACEUTICALS AND TRIPS IN INDIA

The TRIPS Agreement has had significant implications for the pharmaceutical industry in India. Under the 1970 Indian Patents Act, India had a process patent regime for pharmaceutical products, allowing for reverse engineering and the production of generic versions of patented drugs. With the implementation of TRIPS, key provisions regarding pharmaceuticals include:

- Minimum Patent Term
- Patent Protection for Products
- Working of Patents
- Compulsory Licensing
- Burden of Proof

These provisions have shaped the landscape of pharmaceuticals and intellectual property in India, leading to significant changes in the industry and how it operates within the global intellectual property framework.

CONCLUSION

In conclusion, the protection of intellectual property rights is a multifaceted and critical aspect of the global legal landscape. This examination of international legal frameworks for intellectual property sheds light on the philosophical foundations, types of intellectual property, justifications for their protection, constitutional aspects, and international conventions governing them. The philosophical underpinnings of intellectual property rights emphasize the concept of property as a bundle of rights, the role of scarcity and value, and the connection between knowledge and use. These principles underscore the delicate balance between individual property rights and the

common good, emphasizing the need for reasonable restrictions and the promotion of fairness, innovation, and access to knowledge. Intellectual property rights encompass various types, including patents, copyrights, trademarks, and trade secrets, each serving specific purposes in protecting different forms of intellectual creations. The justifications for intellectual property range from labor and value-added theories to personality justification and Max Weber's perspective on social and economic control.

Constitutional aspects of intellectual property are recognized in some countries, highlighting the importance of safeguarding these rights within a nation's legal framework while considering broader public interests.

On the international stage, the World Intellectual Property Organization (WIPO) plays a central role in harmonizing and promoting intellectual property rights worldwide. However, it faces challenges related to influence disparities, transparency, and the balance between private and public interests. International conventions, such as the Paris Convention, Berne Convention, Madrid Agreement, and the establishment of WIPO, have significantly contributed to global cooperation and the protection of intellectual property rights. These conventions have created a framework for creators and inventors to have their works safeguarded internationally, fostering innovation, creativity, and cultural exchange. The Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, binding on all World Trade Organization (WTO) member states, is a cornerstone of international intellectual property protection. It sets minimum standards for patents, copyrights, trademarks, and more, seeking to level the global trade playing field while ensuring effective protection and enforcement of intellectual property rights. In India, the TRIPS Agreement has played a vital role in shaping intellectual property laws and regulations, affecting industries like pharmaceuticals, patents, and copyrights. India has recognized the importance of aligning its

legal framework with international standards to reduce trade distortions and impediments.

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