



PROTECTING DIGITAL INNOVATION: A COMPARATIVE ANALYSIS OF INTERNATIONAL AND INDIAN INTELLECTUAL PROPERTY LAWS

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Abstract

This paper provides an overview of the key concepts and significance of intellectual property, particularly in the context of international and Indian intellectual property laws. It begins by defining intellectual property as a set of intangible rights protecting creative and innovative works. These rights are crucial for incentivizing and rewarding creators and innovators across various domains. The primary motivation for protecting intellectual property is to stimulate progress in science, technology, arts, literature, and creativity by providing exclusive rights to creators. The potential consequences of inadequate intellectual property protection, including reduced incentives for investment in research and development, are outlined. The scope of intellectual property, as defined by international agreements and organizations such as the World Intellectual Property Organization (WIPO), encompasses a broad range of rights and creations, from literary and artistic works to inventions and industrial designs. The piece of work categorizes intellectual property into two main branches: copyright, covering creative works, and industrial property, including inventions and trademarks. It underscores the importance of international agreements like the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in setting global standards for IP protection. The legal perspective on property is also discussed, emphasizing the concept of property as an object over which ownership rights extend. This perspective is supported by relevant court cases, reinforcing the importance of intellectual property rights as a form of property.

Keywords: Intellectual Property, Comparative Analysis, International IP Laws, Indian IP Laws, Digital Innovation Protection

INTRODUCTION

Intellectual property, often abbreviated as IP, is a fundamental concept in the modern world that encompasses the creative and innovative output of the human intellect. It represents a set of intangible rights granted to the creators, inventors, and originators of intellectual works. These intellectual property rights, such as patents, copyrights, trademarks, and more, serve as legal protections for the products of the human mind, ensuring that creators can

benefit from their innovations and ideas.¹⁷² At its core, intellectual property can be described as the invisible and intangible ownership of the fruits of one's intellectual labor.¹⁷³ This includes a wide range of creative and intellectual endeavors, from artistic and scientific works to innovative inventions and technological breakthroughs. It is often likened to the

¹⁷² Philip G Altbach, 'Knowledge Enigma: Copyright in the Third World' (1986) 21 *Economic and Political Weekly* 1643.

¹⁷³ Sayed Qudrat Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' [2022] SSRN Electronic Journal.

"property of the mind" because it grants individuals or organizations exclusive rights to control and use their intellectual creations.

One common way to categorize intellectual property is by considering it as a form of "knowledge goods." Unlike physical goods, which can be limited in quantity and location, intellectual property can be infinitely reproduced and distributed across the globe. This quality makes it a unique asset in the digital age, as information can be disseminated widely and rapidly.¹⁷⁴ The primary motivation behind the protection of intellectual property is to foster progress in various fields, including science, technology, arts, literature, and creativity.¹⁷⁵ By granting creators and innovators exclusive rights to their intellectual works, society encourages and rewards their efforts. This, in turn, promotes a culture of innovation and ensures that those who invest their time and resources into intellectual pursuits can reap the benefits.¹⁷⁶ Failure to provide adequate protection for intellectual property rights can have significant economic and technological consequences. Without such protection, there may be reduced incentives for individuals and organizations to invest in research, development, and creative endeavors. This, in turn, can stifle the economic and technological growth of a nation.

The scope of intellectual property encompasses a wide range of creations and innovations, as outlined in Article 2 (vii) of the convention establishing the World Intellectual Property Organization (WIPO) in 1967. This includes rights related to:

- i. Literary, artistic, and scientific works.*
- ii. Performances of performing artists, phonograms, and broadcasts.*

- iii. Inventions in all fields of human endeavor.*
- iv. Scientific discoveries.*
- v. Industrial designs.*
- vi. Trademarks, service marks, commercial names, and designations.*
- vii. Protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.*

TYPE OF INTELLECTUAL PROPERTY

The types of intellectual property rights within this framework include copyrights, trademarks, service marks, geographical indications, patents, utility models, plant varieties, industrial designs, trade secrets, layout designs of integrated circuits, and more. Intellectual property is often categorized into two main branches:

Copyright

This branch primarily covers creative works such as literature, music, art, and software. Copyright grants authors and creators exclusive rights to reproduce, distribute, and display their works.

Industrial Property

Industrial property encompasses inventions, trademarks, industrial designs, and other innovations that drive technological progress and protect brand identities. The significance of intellectual property is further emphasized by international agreements like the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) within the framework of the World Trade Organization (WTO). TRIPS sets minimum standards for the protection of intellectual property rights on a global scale, highlighting the importance of IP in international trade and innovation.¹⁷⁷

In legal terms, property can be defined as an object over which the right of ownership

¹⁷⁴ Ashwani Kumar Bansal, 'Public Interest in Intellectual Property Laws' (2013) 55 Journal of the Indian Law Institute 476.

¹⁷⁵ Sayed Qudrat Hashimy, 'Copyright or Copyleft: Copyright or Copywrong: What Is the Dichotomy?' (2023) 2 1.

¹⁷⁶ 'Copyright or Copyleft: Copyright or Copywrong: What Is the Dichotomy?'

<https://scholar.google.com/citations?view_op=view_citation&hl=en&user=_XhWcpEAAAAJ&cstart=20&pagesize=80&citation_for_view=_XhWcpEAAAAJ;EwQYaEtUpKwC> accessed 2 September 2023.

¹⁷⁷ Sayed Qudrat Hashimy, 'Copyright or Copyleft: Copyright or Copywrong: What Is the Dichotomy?' (2023) 2 ILE INTELLECTUAL PROPERTY AND CORPORATE LAW REVIEW 1, 10.



extends. It represents something that an individual or entity has exclusive control and authority over. The concept of property includes valuable rights and interests protected by law, particularly the rights of ownership and the exclusive authority to use, possess, and dispose of the property. Property rights, therefore, encompass a wide range of assets and interests that are legally safeguarded.

The legal perspective on property is well-illustrated in various court cases, such as the *Jilubhai Nanbhai Khaches v. State of Gujarat* case,¹⁷⁸ where the Supreme Court defined property as an aggregate of rights guaranteed and protected by the law. This definition encompasses ownership and the exclusive right to control, possess, use, and exclude others from interfering with one's property. Similarly, in the *R-C Cooper v. Union of India* case, the Supreme Court emphasized that property represents the highest right one can have to something, akin to the right one has to lands, goods, or chattels, and it does not depend on the courtesy of others.¹⁷⁹

Thus, intellectual property is a crucial concept that underpins innovation, creativity, and economic development. It grants creators and inventors the rights to their intellectual creations, fostering progress in various fields and safeguarding the fruits of human intellect. As the world continues to evolve in the digital age, the protection and understanding of intellectual property rights remain paramount for fostering a culture of innovation and progress.

INTELLECTUAL PROPERTY RIGHTS UNDER THE AEGIS OF THE INDIAN LEGAL SYSTEM

Intellectual Property Rights (IPR) hold a significant place in the legal framework of India, and understanding their constitutional imperatives is crucial. The concept of property

rights in India has evolved over the years, particularly with respect to intellectual property. Originally, the right to property was a fundamental right under the Indian Constitution. There were two key provisions dealing with property: Article 19(1)(f) (the right to acquire, hold, and dispose of property)¹⁸⁰ and Article 31 (which dealt with the compulsory acquisition of property).¹⁸¹ However, these provisions were repealed by the 44th Amendment of the Constitution in 1978, and the right to property was redefined as a legal right under Article 300A. This article states that "No person shall be deprived of his property save by authority of law."¹⁸²

Importantly, Article 300A applies not only to tangible property but also extends to intangible property, including intellectual property rights. This constitutional protection ensures that individuals and entities have a legal right to their intellectual creations and innovations.

However, the right to property, including intellectual property, is not absolute and is subject to reasonable restrictions. These restrictions are outlined in Article 300A itself, which allows property to be wholly or partially acquired in the public interest and on the payment of reasonable compensation. This means that the government can acquire property, including intellectual property, for purposes like infrastructure development, but it must provide adequate compensation.

It's worth noting that while executive actions can be challenged if they infringe on property rights, legislative actions can also be challenged if they deprive a person of their property for purposes other than the public interest or if they do not offer fair compensation.

¹⁸⁰ 'Article 19: Protection of Certain Rights Regarding Freedom of Speech, Etc.' (*Constitution of India*)

<<https://www.constitutionofindia.net/articles/article-19-protection-of-certain-rights-regarding-freedom-of-speech-etc/>> accessed 2 September 2023.

¹⁸¹ 'Article 31: Compulsory Acquisition of Property (Omitted)' (*Constitution of India*) <<https://www.constitutionofindia.net/articles/article-31-compulsory-acquisition-of-property/>> accessed 2 September 2023.

¹⁸² 'Article 300A Constitution of India: Persons Not to Be Deprived of Property Save by Authority of Law' <<https://www.latestlaws.com/bare-acts/central-acts-rules/article-300a-constitution-of-india-persons-not-to-be-deprived-of-property-save-by-authority-of-law>> accessed 2 September 2023.

¹⁷⁸ 'Sh. Jilubhai Nanbhai Khachar Etc ... vs State Of Gujarat And Anr. Etc. Etc on 20 July, 1994' <<https://indiankanoon.org/doc/1515136/>> accessed 2 September 2023.

¹⁷⁹ 'Rustom Cavasjee Cooper vs Union Of India on 10 February, 1970' <<https://indiankanoon.org/doc/513801/>> accessed 2 September 2023.

When it comes to intellectual property rights, the Indian legal system has recognized their importance. In the case of *Entertainment Network v/s Super Cassette Industries (2008)*,¹⁸³ the Supreme Court acknowledged that the owner of copyright has a right akin to the right of property. Copyright owners have the ability to exploit their works through voluntary licenses, which are governed by the Copyright Act of 1957.

The constitutional framework in India acknowledges that property rights, including intellectual property, are essential for economic activity. However, these rights are not absolute and are subject to reasonable restrictions, especially when they create monopolies that deny public access. Monopolistic practices can be deemed unfair trade practices, which are discouraged in the Indian constitutional scheme. Moreover, India recognizes the importance of disseminating knowledge and making artistic works available to the public, provided reasonable terms and compensation are granted. In terms of legislative authority, Article 119 of List I (Union List) in the 7th Schedule of the Indian Constitution grants power to the Parliament to make laws related to patents, inventions, designs, copyright, and trademarks.¹⁸⁴ Additionally, the power to make laws regarding other aspects of intellectual property rights, such as geographical indications, plant varieties, and layout designs of integrated circuits, is vested in the Parliament through Entry 49 of List I.¹⁸⁵

CONSTITUTIONAL ASPECT OF INTELLECTUAL PROPERTY

The constitutional aspect of intellectual property rights in India may not explicitly declare intellectual property as property, as seen in the United States Constitution, but it

¹⁸³ M/S. Entertainment Network ... vs M/S. Super Cassette Industries ... on 16 May, 2008' <<https://indiankanoon.org/doc/1592558/>> accessed 2 September 2023.

¹⁸⁴ 'Protection of Video Games under Indian and the United States of America Copyright Law' <https://scholar.google.com/citations?view_op=view_citation&hl=en&user=_XhWcpEAAAAJ&cstart=20&pagesize=80&citation_for_view=_XhWcpEAAAAJ:eiwtZcG9oBcC> accessed 2 September 2023.

¹⁸⁵ Bansal (n 4).

does provide a legal framework that recognizes and protects these rights. Article 300A safeguards property rights, and Article 253 mandates the recognition of international aspects of laws, legislations, and agreements, allowing the Indian Parliament to enforce international treaties through legislation.

Furthermore, the Indian Constitution offers specific safeguards to protect property rights in agriculture, as evidenced by the Protection of Plant Varieties and Farmers' Rights Act of 2001.¹⁸⁶ This legislation aims to protect and promote the interests of farmers, ultimately contributing to the growth of the agricultural sector and the overall Indian economy. Similarly, the Biodiversity Act of 2002 is designed to safeguard various biological resources against misuse and unfair commercial and non-commercial activities. This includes protecting plants, animals, microorganisms, genetic materials, and by-products.¹⁸⁷

Henceforth, intellectual property rights are a crucial component of the legal landscape in India. While the Indian Constitution does not explicitly declare intellectual property as property, it provides a robust framework for their protection, including reasonable restrictions when necessary.¹⁸⁸ Additionally, specific legislation addresses the protection of property rights in agriculture and biodiversity. Overall, this legal framework reflects India's commitment to balancing property rights with the public interest and economic development.

HUMAN RIGHTS AND INTELLECTUAL PROPERTY

Human rights and intellectual property rights are two fundamental and interrelated aspects of the contemporary global legal landscape. They intersect in complex ways, impacting not only economic and cultural aspects but also the enjoyment of basic human rights. In today's

¹⁸⁶ Vandana Shiva, 'Agricultural Biodiversity, Intellectual Property Rights and Farmers' Rights' (1996) 31 Economic and Political Weekly 1621.

¹⁸⁷ Stephen B Brush, 'Indigenous Knowledge of Biological Resources and Intellectual Property Rights: The Role of Anthropology' (1993) 95 American Anthropologist 653.

¹⁸⁸ Sayed Quadrat Hashimy and Emmanuel Elimhoo Kimey, 'Protection of Digital Contents under Indian Copyright Law in the Light of International Conventions' (2022) 5 1302.

world, human rights norms have become a crucial benchmark for assessing the sustainability of cultures, religions, ideologies, and state practices on the international stage.¹⁸⁹

Intellectual property, particularly in the context of an information or knowledge-based economy, has gained immense significance. The allocation of rights over intellectual property has far-reaching economic, social, and cultural implications, which can either promote or hinder the realization of human rights. Here are several key points highlighting the intersection of human rights and intellectual property rights:

Global Trade and Intellectual Property

The establishment of the World Trade Organization (WTO) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has brought intellectual property rights to the forefront of global trade regulation. This has led to increased scrutiny by governments, international bodies, intergovernmental and non-governmental organizations, scholars, and courts regarding the interplay between human rights and intellectual property rights.

International Covenant on Economic, Social and Cultural Rights

One of the most crucial legal instruments for examining the relationship between human rights and intellectual property rights is the International Covenant on Economic, Social and Cultural Rights. This covenant recognizes several rights, including the right to health and the right to food, which can be affected by the adoption or strengthening of intellectual property frameworks, based on commitments made under TRIPS and other intellectual property treaties.

Right to Participate in Cultural Life: Article 15 of the covenant explicitly recognizes the right of individuals to participate in cultural life, enjoy

the benefits of scientific progress and its applications, and benefit from the protection of moral and material interests resulting from intellectual and artistic creations. This article underscores the importance of intellectual contributions to society.

Freedom for Scientific Research and Creativity

The covenant emphasizes the need for states to respect the freedom indispensable for scientific research and creative activity. This recognition highlights the importance of intellectual property rights in fostering innovation and knowledge creation.

Suigeneris Forms of Intellectual Property

In response to concerns about the limitations of existing intellectual property rights, there has been a move toward creating sui generis forms of protection. These aim to provide legal safeguards for individuals, communities, and actors who may not benefit adequately from conventional intellectual property rights.

Protection of Traditional Knowledge

There is a growing emphasis on protecting traditional knowledge and the rights of indigenous communities. Traditional knowledge is often at risk of appropriation, and efforts are being made to establish legal forms of protection.

Integration of Regimes

Ideally, there should be synergy and integration between intellectual property and human rights regimes. Viewing intellectual property through the lens of human rights can encourage a reconsideration of how intellectual property mechanisms can be reshaped to address interests and needs that are currently underserved.

Thus, the relationship between human rights and intellectual property rights is multifaceted and dynamic. It encompasses economic, social, cultural, and ethical dimensions. Recognizing and addressing the intersections and tensions between these two domains is essential to

¹⁸⁹ Philippe Cullet, 'Human Rights and Intellectual Property Protection in the TRIPS Era' (2007) 29 Human Rights Quarterly 403, 11.

ensure a balanced legal framework that promotes innovation, knowledge dissemination, cultural diversity, and the protection of fundamental human rights. Achieving this balance requires ongoing dialogue, international cooperation, and the development of legal mechanisms that address the evolving challenges of the modern world.

THE JUSTIFICATION FOR INTELLECTUAL PROPERTY RIGHTS

The justification for Intellectual Property Rights (IPR) encompasses various theories that seek to provide a rationale for the legal protection of intellectual creations. Here, we'll explore the four main theories:

Utilitarian Theory

The Utilitarian Theory, as proposed by Jeremy Bentham, is grounded in the principle of "the greatest good for the greatest number." In the context of intellectual property, this theory argues that granting creators exclusive rights to profit from their work provides monetary incentives for technological inventions and artistic creations.¹⁹⁰ By doing so, it benefits society at large. The proliferation of intellectual property rights aims to encourage investment in both time and finances, ultimately leading to innovations and works that enhance the general welfare of the population.¹⁹¹

Labour Theory

John Locke's Labour Theory is based on the idea that individuals who labor on resources held in common have a natural right to the fruits of their efforts, and the state has a duty to protect this right. This theory asserts that a person's labor increases the value of a shared resource, and thus, the results of their labor belong to them as a natural right. In the context of intellectual property, if someone applies their mental labor to transform publicly available knowledge or information into "knowledge

goods," they are entitled to protection for such creations.¹⁹²

Personality Theory

The Personality Theory, championed by philosophers like Kant and Hegel, centers on an individual's personality and its external extensions.¹⁹³ According to this theory, individuals acquire an "absolute right of appropriation" by exerting their will over something, making it their own. Personality Theory argues for property rights when they promote human flourishing by safeguarding or promoting fundamental human needs and interests.¹⁹⁴ Four such interests identified by Fisher include privacy, individual self-realization, identity, and benevolence. For this theory to apply, there should be a deep and emotional connection between the creator and their works or inventions.

Social Planning Theory

The Social Planning Theory focuses on shaping property rights, including intellectual property rights, to foster the creation of a just and attractive culture. While it has a less established foundation, this theory goes beyond notions of social welfare to envision a broader role for intellectual property in serving society.¹⁹⁵ It seeks to integrate intellectual property into a broader vision of societal well-being. Henceforth, Intellectual Property Rights are underpinned by various theoretical justifications, each highlighting different aspects of the importance of protecting intellectual creations. These rights span different types of intellectual property, each serving specific functions in the realms of innovation, creativity, and commerce. Intellectual property plays a pivotal role in promoting and safeguarding the fruits of human ingenuity and creativity in our knowledge-driven society.

¹⁹⁰ Christopher Buccafusco, 'A Theory of Copyright Authorship' (2016) 102 Virginia Law Review 1229.

¹⁹¹ Hashimy and Kimey (n 18).

¹⁹² 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.

¹⁹³ Buccafusco (n 20).

¹⁹⁴ 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 14).

¹⁹⁵ Sayed Qudrat Hashimy (n 7).

WORLD INTELLECTUAL PROPERTY ORGANISATION

The WIPO Convention, formally known as the Convention Establishing the World Intellectual Property Organization, is a significant international agreement that was signed in Stockholm in 1967 and entered into force in 1970. WIPO, which stands for the World Intellectual Property Organization, has played a pivotal role in promoting and protecting intellectual property rights on a global scale. Here, we'll delve into the establishment, objectives, functions, and key organs of WIPO, as well as its contributions to international intellectual property protection.

Establishment of WIPO

The WIPO Convention was a response to the growing need for an international organization dedicated to the protection of intellectual property rights. It was established as a specialized agency of the United Nations in 1974. The roots of WIPO can be traced back to two pivotal international agreements: the Paris Convention of 1883 and the Berne Convention of 1886. These conventions provided for the establishment of international secretariats that were supervised by the respective host governments. Over time, these secretariats were combined and became known as BIRPI, which eventually evolved into WIPO.

OBJECTIVES OF WIPO

WIPO's core objectives revolve around promoting and safeguarding intellectual property rights globally. Its primary objectives include:

1. *To promote the protection of intellectual property worldwide through cooperation among states and, where appropriate, collaboration with other organizations*
2. *To ensure administrative cooperation among the intellectual property unions established by the treaties administered by WIPO, such as the Paris Union and Berne Union.*

FUNCTIONS OF WIPO

WIPO carries out various functions to achieve its objectives. These functions encompass:

a) Normative Activities

This involves setting norms and standards for the protection and enforcement of intellectual property rights through the conclusion of international treaties.

b) Programme Activities

Providing legal and technical assistance to states in the field of intellectual property, international classification, standardization activities, cooperation among industrial patents, trademarks, industrial design documentation, and registration activities related to international applications for patents, trademarks, and industrial designs.¹⁹⁶

ORGANS OF WIPO

WIPO's governance structure comprises three main organs:

WIPO General Assembly

Composed of WIPO member states, it is responsible for appointing the Director-General, reviewing and approving the Director-General's reports and the activities of the coordination committee, and adopting the biennial program of technical assistance. It can also discuss matters of general interest in the field of intellectual property and make recommendations.

WIPO Coordination Committee

Comprising members elected from the executive committee of the Berne Union, it meets annually to provide advice on administrative and financial matters to various WIPO bodies. It also prepares agendas and drafts budgets for the General Assembly and conference.

¹⁹⁶ Jonathan Band, 'The Copyright Paradox: Fighting Content Piracy in the Digital Era' (2001) 19 The Brookings Review 32.

WIPO Conference

Composed of parties to the WIPO Convention, it convenes every two years to adopt amendments to the convention, oversee legal-technical assistance, and establish the biennial program of such assistance.¹⁹⁷ It also discusses general matters related to intellectual property and can adopt recommendations.

International Registration and Classification System

WIPO offers international registration systems under various treaties for patents, trademarks, geographical indications of origin, and industrial designs. These systems simplify the process of seeking protection in multiple countries by allowing applicants to file a single application in multiple languages and pay a single fee. Additionally, WIPO treaties have created classification systems to organize information on different branches of industrial property, aiding applicants in determining the uniqueness of their creations.

Arbitration and Mediation Center

WIPO provides an Arbitration and Mediation Center, which plays a crucial role in resolving international commercial disputes involving intellectual property. These disputes can range from contractual matters, such as patent and software licensing agreements, to non-contractual issues like patent infringement.¹⁹⁸ The center also deals with disputes arising from the abusive registration and use of internet domain names, making it a vital resource for resolving complex IP-related conflicts.

TREATIES ON COPYRIGHT

Berne Convention for the Protection of Literary and Artistic Works (1886): The Berne Convention is the first multilateral convention on copyright and was adopted in 1886. Over the years, it has been revised to address challenges posed by

technological advancements. The main purpose of the Berne Convention is to protect the rights of authors in their literary and artistic works.¹⁹⁹ The scope of protected works under this convention is broad, encompassing various forms of creative expression, including literature, scientific works, artistic creations, and more. It also covers derivative works, such as translations and adaptations. Copyright protection typically lasts for the life of the author plus 50 years.²⁰⁰ While your text touches upon copyright and patent aspects, it doesn't delve into industrial property treaties. Industrial property typically includes patents, trademarks, industrial designs, and geographical indications. International agreements like the Paris Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) play crucial roles in harmonizing and protecting industrial property rights on a global scale. These treaties facilitate the recognition and protection of intellectual property rights in different countries and promote innovation and fair trade practices.

The Paris Convention for the Protection of Industrial Property, established in 1883 and subsequently revised at several international conferences, is a pivotal treaty in the realm of intellectual property rights. It covers a wide range of industrial property aspects, including patents, trademarks, service marks, industrial designs, utility models, trade names, indications of source, appellation of origin, and the suppression of unfair competition.²⁰¹ Here's an in-depth look at some of the key provisions and principles of the Paris Convention:

1. National Treatment

The Paris Convention upholds the principle of national treatment. This means that each

¹⁹⁷ Ali Amirmahani, 'Digital Apples and Oranges: A Comparative Analysis of Intermediary Copyright Liability in the United' (2015) 30 Berkeley Technology Law Journal 865.

¹⁹⁸ Altbach (n 2).

¹⁹⁹ Pheh Hoon Lim, 'Copyright in Logos and Exhaustion of Rights under the First Sale Doctrine in Grey Markets' (2012) 7 Journal of Intellectual Property Law & Practice 663.

²⁰⁰ Buccafusco (n 20).

²⁰¹ Shyamkrishna Balganes, 'Gandhi and Copyright Pragmatism' (2013) 101 California Law Review 1705.



contracting state must grant the same level of protection to nationals of other contracting states as it does to its own nationals. This ensures that foreign inventors, trademark holders, and creators are not discriminated against in terms of protection. Even nationals of non-contracting states can receive national treatment if they are domiciled or have an effective industrial or commercial establishment in a contracting state. This principle prevents unequal treatment based on nationality.²⁰²

2. Right of Priority

The convention introduces the concept of the right of priority. In the context of patents, utility models, trademarks, and industrial designs, an applicant who files an application in one contracting state can, within a specified period (usually 12 months for patents and utility models, and 6 months for industrial designs and marks), apply for protection in any other contracting state. The later application in another contracting state is then treated as if it had been filed on the same day as the initial application. This provision simplifies the international filing process for intellectual property rights.²⁰³

3. Common Rules

The Paris Convention establishes common rules for contracting states regarding the treatment of intellectual property rights:

Hence, the Paris Convention for the Protection of Industrial Property serves as a foundational framework for the protection of intellectual property rights on an international scale. It ensures equal treatment of inventors, creators, and trademark holders from different countries, simplifies the process of seeking protection in multiple jurisdictions, and establishes common rules for the treatment of intellectual property rights among contracting states. It has been

instrumental in fostering international cooperation and harmonizing the protection of industrial property.²⁰⁴

The World Intellectual Property Organization (WIPO) plays a significant role in addressing digital content protection and intellectual property rights in the digital age. With the rapid advancement of technology and the widespread distribution of digital content, protecting intellectual property rights has become increasingly challenging and critical. Here are some key aspects of WIPO's involvement in digital content protection:

WIPO Copyright Treaties

WIPO has established two major international treaties to address digital content protection – the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). These treaties, collectively known as the WIPO Internet Treaties, were adopted in 1996 to update and strengthen copyright protection in the digital environment.²⁰⁵

Digital Rights Management (DRM)

WIPO has been involved in discussions and initiatives related to Digital Rights Management systems. DRM technologies are used to control access to and use of digital content, such as ebooks, music, and software. WIPO has facilitated discussions among member states and stakeholders to develop guidelines and best practices for DRM systems that balance the rights of creators and the interests of users.²⁰⁶

Domain Name Disputes

WIPO operates the Uniform Domain Name Dispute Resolution Policy (UDRP), which deals with disputes over domain names that infringe on trademark rights. This is particularly relevant in the digital context, where websites and online

²⁰² Shyamkrishna Balganes, 'Copyright Infringement Markets' (2013) 113 Columbia Law Review 2277.

²⁰³ Shyamkrishna Balganes, 'Debunking Blackstonian Copyright' (2009) 118 The Yale Law Journal 1126.

²⁰⁴ Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 22).

²⁰⁵ Sayed Qudrat Hashimy (n 7).

²⁰⁶ 'Copyright or Copyleft: Copyright or Copywrong: What Is the Dichotomy?' (n 6).

platforms often use domain names that may be confusingly similar to trademarked names.

Intellectual Property and E-commerce

WIPO has worked on issues related to intellectual property and e-commerce.²⁰⁷ As online commerce has grown, the protection of intellectual property rights in the context of digital transactions has become a significant concern. WIPO has provided guidance and resources to address these challenges.

WIPO Academy

WIPO offers online courses and resources through its WIPO Academy, which help educate professionals and stakeholders about intellectual property rights in the digital era. These courses cover topics such as copyright in the digital environment, patent protection for digital inventions, and more.²⁰⁸

Global Database of Intellectual Property (WIPO GOLD)

WIPO GOLD is an online resource that provides access to a vast amount of intellectual property information, including digital content. It helps creators and users understand the legal and regulatory landscape for intellectual property rights, including copyright and trademarks.

Capacity Building

WIPO provides technical assistance and capacity-building programs to member states, especially developing countries, to help them strengthen their legal and regulatory frameworks for protecting intellectual property rights in the digital space. This includes training on enforcement measures and strategies for combating digital piracy and counterfeiting.²⁰⁹

Policy Discussions

WIPO regularly convenes member states and stakeholders to discuss and formulate policies related to digital content protection. These

discussions often result in guidelines, recommendations, and best practices that help shape international standards and agreements.

Therefore, WIPO recognizes the evolving challenges posed by the digital age to intellectual property rights and has been actively involved in addressing these challenges through treaties, guidelines, capacity-building, and policy discussions. As digital content continues to shape the global economy and culture, WIPO's role in facilitating international cooperation and protection remains crucial.

CONCLUSION

In conclusion, this comprehensive analysis of international and Indian intellectual property laws underscores the critical role of intellectual property in fostering innovation, creativity, and economic development. Intellectual property, encompassing copyright and industrial property, grants creators and inventors exclusive rights to their works and inventions, incentivizing investment in research and development.

International agreements like the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) set global standards for IP protection, emphasizing its importance in international trade and innovation. Furthermore, the legal perspective on property reinforces the concept of intellectual property rights as a form of property, supported by relevant court cases.

In India, intellectual property rights are constitutionally protected under Article 300A, ensuring legal recognition and safeguarding of intellectual creations. However, these rights are subject to reasonable restrictions, striking a balance between property rights and the public interest.

The intersection of human rights and intellectual property rights highlights the complex relationship between economic, social, and cultural aspects and underscores the need for ongoing dialogue and international

²⁰⁷ Amirmahani (n 27).

²⁰⁸ Hashimy, 'Protection of Video Games under Indian and the United States of America Copyright Law' (n 22).

²⁰⁹ Altbach (n 2).

cooperation to achieve a balanced legal framework.

Additionally, various theoretical justifications, including the Utilitarian, Labour, Personality, and Social Planning theories, underpin intellectual property rights, emphasizing different aspects of their importance.

The World Intellectual Property Organization (WIPO) plays a pivotal role in promoting and safeguarding intellectual property rights globally. Established in 1974, WIPO aims to set norms and standards, provide legal and technical assistance, and offer international registration and classification systems. Its Arbitration and Mediation Center also facilitates the resolution of international intellectual property disputes.

Finally, international treaties, such as the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property, contribute to the harmonization and protection of intellectual property rights on a global scale. These treaties ensure national treatment, the right of priority, and common rules among contracting states, fostering international cooperation and simplifying the process of seeking protection in multiple jurisdictions.

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