

Globalisation and Intellectual Property Laws: Its Impact On Developing Nations

SHIVANI SRINATH

LLM CHRIST (DEEMED TO BE) UNIVERSITY,

BANGALORE

ABSTRACT

A powerful system of globalization has been experienced in the recent times. This has always been the case for world trade and global capital financial markets, as well as in the area today of IPRs Intellectual property rights were initially used to be in nation-state domains. In IPR organisations globally, international agreements have indeed determined divergence. This paper will discuss the positive and negative effects of globalisation on intellectual property, which encompasses the harmonisation of the legal process in IP regulations which is due to globalisation of the entire market. The same will be explained in reference to the World Trade Organization (WTO), which encompasses more than 155 nations and the World Intellectual Property Organization (WIPO), in the wider context of the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS). This will also discuss how the TRIPS agreement has impacted the developing nations and whether the same is limiting the developing countries growth due to the universal standardisation of values and principles.

INTRODUCTION

The Intellectual Property Rights were indeed designed to give to owners exclusive use of legally registered right and also and also and also and also and also to enable people to make profits of their own creation and also excluding other persons from exploiting their rights without approval Intellectual Property includes various kinds of exclusive rights such as copyrights, patents, trademarks, designs etc where every right has its own purpose In addition, each nation domestically builds up its intellectual property rights. It is indeed up to the country to make the decision of the ambit and scope of its Intellectual property laws, the country has the authority to penalise according to its own IP laws.¹

¹ Archibugi, D. & Filippetti, A., *the globalization of intellectual property rights: Much ado about nothing?* 2013

On the flip side, the world has been experiencing a new phase of the globalization, over the previous two centuries. This new phase implies that the nations do not have any territories so the whole world is interlinked and interdependent. The marketplace is been broadened to all of the countries, leading to a rise in global trade year after year. Freedom of movement of goods, new capital, and businesses are trading with customers worldwide. ²

Both philosophies are interconnected. In the current globalized world, domestic law on intellectual property is not sufficient to safeguard global trade just because the businesses actually operate far beyond their nations, so a violation of their intellectual property can also be safeguarded not only by domestic law, but also through global law. as there is a limitation to global trade, countries do not have a mechanism to assert their rights in a foriegn nation obviously, if their rights are violated and plagiarised without punishment, anybody would make a trade.³

GLOBALIZATION AND INTELLECTUAL PROPERTY RIGHTS

In terms of international Intellectual property laws and regulation, the two organizations involved are, the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) who are the main players.⁴

World Intellectual Property Organization (WIPO):

One of the sixteen United Nations highly specialized agencies is the World Intellectual Property Organization (WIPO). The objectives of the same is as follows:

“It aims to evolve a stable and affordable global order of intellectual property that rewards creative thinking, enhances innovation and contributes significantly to economic prosperity even while protecting the national interest.” ⁵

As global intellectual property had become extremely important, two vital conventions took place over the course of the 19th millennium. Countries assembled at the Paris Convention on

² BBC, *What Is Globalisation?* Also available at, <https://www.bbc.com/bitesize/guides/zxpn2p3/revision/1> last accessed on 17th February 2019.

³ See Supra note 1

⁴ Dr. Malcom D, *Globalization and Intellectual Property How does the TRIPS agreement affect developing nations*, Also available at <http://www.theologeek.ch/wp-content/uploads/2012/10/OKeshavjee-Globalization-and-Intellectual-Property.pdf> , last accessed on 17th February 2019.

⁵ WIPO, official website, Also available at http://www.wipo.int/about-wipo/en/what_is_wipo.html , last accessed on 17th February 2019.

Industrial Property in 1883, accompanied also by the Berne Convention on the Legal protection of Literary and Artistic Works in 1886. Both established an office that formed the United International Bureau for the Protection of Intellectual Property in 1893. The offices relocated from Bern to Geneva in 1960, which then became the WIPO in 1970, and in 1974 the United Nations rationalized them. In 1996, WIPO entered into an agreement of cooperation with the World Trade Organization on the enactment of the TRIPS treaty.⁶

The World Trade Organisation (WTO) And Trade Related Aspects of Intellectual Property (TRIPS):

The 1947 General Tariff and Trade Agreement (GATT) was entered into by the member nations. During the Uruguay Round which is the eighth round of trade negotiations where World Trade Organisation (WTO) was created and was enforced in 1995 by signing of the Marrakesh agreement⁷

The World trade organisation is "so far the only global body coping with trade laws among countries whose objective would be to assist the manufacturers of goods and services, suppliers and wholesalers run their businesses."⁸ It contains a number of trade treaties and a mechanism for resolving disputes. it has around 164 nations as members currently.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) came into force as well during the Uruguay Round of trade negotiations. This agreement sets out the basic standard for intellectual property rights which should be to be provided by member nations. For instance, copyright should be granted for the term period of at least 50 years following the author's death and also the author gets copyright once the work is completed and registration for the same is not necessary also the computer programs should be considered as a literary work, further more patents must have been enforceable for a term of 20 years. Hence these terms are called as "Strong IPRs".⁹

⁶ See Supra note 4

⁷ Ibid 6

⁸ From the WTO website, Also available at <http://www.wto.org/>, last accessed on 17th February 2019.

⁹ Dr. Malcom D, *Globalization and Intellectual Property How does the TRIPS agreement affect developing nations*, Also available at

<http://www.theologeek.ch/wp-content/uploads/2012/10/OKeshavjee-Globalization-and-Intellectual-Property.pdf>, last accessed on 17th February 2019.

A vital change was embraced at the specific request of third world countries in the 2001 Doha Declaration of the TRIPS Treaty and Global health, letting the treaty to be actually read permissively when it came to essential pharmaceuticals. This is actually mandatory licensing for nations whose chemical sectors are not sufficiently developed; a exemption was awarded in 2003 letting the importing of patented pharmacy products all into developing countries till two fourths of WTO representatives acknowledged the change for the better.¹⁰

HARMONISATION OF LAWS

The law harmonization cycle begins with a need for nations to "drive down costs and promote financial transactions." This is due to the global behaviours which have greatly increased by such a degree that globalisation is universally accepted as just a financial phenomenon which impacts almost all the human population explicitly or implicitly.¹¹

A capitalist system was formed without geographical boundaries because of improved connectivity and technological advancement. Even in this in new situation, where many transactions of commodities and subsequently trading platforms of "goods embracing IPR are now being traded away globally," it was essential to harmonize the intellectual property rights in order to remove counterfeit goods and intellectual property theft and to enhance global trade.¹² Similarly, the Committee in total charge of guiding the TRIPS treaty gave the following two reasons as a requirement of confirming an international intellectual property deal.¹³

Nonetheless, the harmonization of the whole IP laws which has taken place for the past few years has always been a complex process since it includes nations with practicalities and personal interests of some of this discrepancy as Zambia and the United states. Initially, it started with nations with akin economic development and then slowly had become part of

¹⁰ This was acclaimed as a victory for many developing nations, though there are some voices that fear pharmaceutical companies won't have the incentives to research any more. In the long run, this decision might be devastative for developing nations. "When this outcome threatens, developing countries should press for alternatives to patents as a means of financing the development of pharmaceutical products that are relevant to their special needs." (Hindley, 2006:42)

¹¹ Gonzalo S, *How the globalisation has affected into the Intellectual Property*, Also available at https://www.academia.edu/11464661/How_the_globalisation_has_affected_into_the_Intellectual_Property?auto=download , last accessed on 17th February 2019.

¹² Ibid.

¹³ GERVAIS, D. 2003, THE TRIPS AGREEMENT: DRAFTING HISTORY AND ANALYSIS, SECOND EDITION.

those nations far less growth and to eventually finish with virtually all nations wanting to join troops to become actually part of the globalised society.¹⁴

The Intellectual Property Rights Trade Related Aspects Agreement (TRIPS), ratified in Marrakech on April 15, 1994 and which came into force in 1995, however is a part of the World Trade Organization.

The TRIPS agreement is very vital as it harmonises the intellectual property laws. It is because it encompasses 164 nations, and also more also importantly, as had said they also raise the basic global Intellectual Property standard that ought to be completely compliant with the member state nations of their national laws. The TRIPS treaty includes all the marks such as patent, copyright and trademarks, they further include dispute resolving provisions which may occur during the nations through the trade.¹⁵

Despite the TRIPS, due to which, it contains bare minimum IP requirements, but it gives nations the liberty to incorporate such standards. It could also be contended that although the TRIPS had a significant effect in the nations intellectual property laws, since it has excelled in harmonizing the Intellectual property laws of 160 countries, frictions still very much truly exist here between counties as a consequence of the enactment of those standards set.¹⁶

The TRIPS connected two paradigms which had been differentiated up till now, which were intellectual property rights and global trade. Similarly, this also permitted the configuration of bare minimum intellectual property basis which are used as the model for future nation agreements. For this whole purpose, the data advises that TRIPS is also a hugely positive ramification of Intellectual property globalization as it is the foremost the international treaty which encompasses several nations and sets the basic minimum laws that all the domestic laws must have. Thus it is evident that global trade between the nations is been strongly supported¹⁷

¹⁴ See Supra note 11

¹⁵ Archibugi, D. & Filippetti, A. 2013, *The globalization of intellectual property rights: Much ado about nothing?*

¹⁶ See Supra note 11

¹⁷ Gonzalo S, *How the globalisation has affected into the Intellectual Property*, Also available at https://www.academia.edu/11464661/How_the_globalisation_has_affected_into_the_Intellectual_Property?auto=download, last accessed on 17th February 2019.

HOW ARE INTELLECTUAL PROPERTY RIGHTS AFFECTING DEVELOPING COUNTRIES??

Globalisation can be comprehended as "perhaps the extremely rapid assimilation of both the physical and digital goods and services across borders."¹⁸ In addition to the alarming speed of goods unification, the incremental creation of new of computer technology has indeed altered the scene of "property" and also the industry, the balance of forces, the connections between owners of capital, dispersion, reception and usage completely.¹⁹ In this context and under the TRIPS agreement, knowledge understood as proprietarizable becomes goods.

Knowledge understood as proprietary technology will become goods in this context but under the TRIPS Treaty. Lot of studies of reveal that stronger Intellectual property rights really have advantageous economic effects of developing nations. They contribute significantly; for instance, to shifting from variable competition to vibrant competition, and in specific to enhancing foreign direct investment, licensing, and enabling technology transfer.²⁰ By evaluation it can be said that the results of foreign direct investment and technology transfer have significant results. The issue arises when licensing comes into the picture specially the price of the patent and copyright under the intellectual property.²¹

¹⁸ Dr. Malcom D, *Globalization and Intellectual Property How does the TRIPS agreement affect developing nations*, Also available at

<http://www.theologeek.ch/wp-content/uploads/2012/10/OKeshavjee-Globalization-and-Intellectual-Property.pdf>, last accessed on 17th February 2019.

¹⁹ Wang, S. *Recontextualizing Copyright: Piracy, Hollywood, the State, and Globalization*. Cinema Journal, 43(1), 2003 at 25–43.

²⁰ Fink, C. & Braga, *How Stronger Protection of Intellectual Property Rights Affects International Trade Flows*. In C. Fink & K. E. Maskus (eds.) *Intellectual Property and Development. Lessons From Recent Economic Research*. New York: World Bank & Oxford University Press, C.A.P 2005, at 19–40.

²¹ Lippoldt, D.. *Can Stronger Intellectual Property Rights Boost Trade, Foreign Direct Investment and Licensing in Developing Countries?* In M. P. Pugatch (ed.) *the Intellectual Property Debate. Perspectives from Law, Economics and Political Economy*. Massachusetts: Edward Elgar Publishing, 2006 , at 44–61.

Studies establish the use of intellectual property rights to establish market powers.²² This however was evident in Google's recent purchase of Motorola Flexibility for about \$12.5 billion in the payment, Google obtained 17,000 patents awarded and 7,000 currently pending patents, "which will also encourage us to help protect Android from Microsoft, Apple and other companies' anti-competitive accusations."²³

It is apparent how in this situation, the international market is predominantly incapacitated by the industry sector of any third world country. And patent claims are indeed threatening for patenting the forms of life unless modified. Barrientos gave some instances, where Neem was used in India for years as an insecticide by females and now the United States as well as the EU has around 35 patents on the same.

It is a matter of life for African groups. "They rely on ecosystems and aboriginal expertise for their livelihoods, susceptible to the selfishness, domestication and harassment of bio - slavers and of their own business interests."²⁴

Economically speaking, especially given that an immense percentage of patents arise the industrialized world, protection of a patent is likely to result in earnings transfer from less developed nations to the much more developed nations, thus widening wealth gaps between both.²⁵

The TRIPS treaty compels WTO representatives to implement the very first nineteen articles of the Berne Convention when it finally comes to copyright²⁶, "that will likely have the

²² Blakeney, M. *A Critical Analysis of the TRIPS agreement*. In M. P. Pugatch (ed.) *The Intellectual Property Debate. Perspectives from Law, Economics and Political Economy*. Massachusetts: Edward Elgar Publishing, 2006 at 17–32.

²³ Larry Page, CEO of Google, Also available at <http://googleblog.blogspot.com/2011/08/supercharging-android-google-to-acquire.html>, last accessed on 17th February 2019.

Another recent example is Apple's trial against Samsung, to prevent them to deploy their new product (Galaxy Tab 10.1) which violates one of Apple's patent over a flat rectangular design, 15th of August 2011.

²⁴ LenkaBula, P. *The Social and Ethical Implications of Article 27 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) on African Communities, Biodiversity and Indigenous Knowledge*. *Journal of theology for Southern Africa*(122): 2005, at 36–56.

²⁵ Ibid.

²⁶ Interestingly, the USA acceded the Bern convention only in 1989, and we will see that the story literature publishing in developed country is one based on what we would call today "piracy", the USA more than anyone else.

impact of trying to lock undergraduates and researchers both from the global communications scheme in developing countries."However, the marketplace of concepts is still primarily being used as a income extraction method, as well as in developing nations.²⁷

And so, who will ultimately benefit from the TRIPS treaty which is being applied in developing nations? As the majority of developing nations are new technology purchasers from developed nations, Foreign direct investment will increase and as well as licensing, and powerful Intellectual property rights will enable businesses to expand their industries without fear of the consequences of "counterfeiting." Due to the new market place of developed countries, the World Bank is in the advantageous position and estimates a huge benefit from the same. Provided that a significant proportion of patents were retained in developed nations, "protection of patent is likely to result in income handover from developing nations to more advanced countries and hence broaden the income gaps between both the two."²⁸ According to Hindley, we can never entirely sure of the worldwide benefit from regulation of Intellectual Property laws, as we cannot be certain that significantly stronger Intellectual properties may boost innovation and creativity. "But perhaps the faith here that the TRIPS treaty generates, or will generate, a much sturdier basis for simply transferring significant wealth from inhabitants of developing countries to citizens of wealthy countries." This wealth redistribution creates the impression the however that "the WTO is a transport for rich nations which leads to exploitation of developing nations," and plays an important role in developing nations ' the above stated is the low opinion of the WTO in the aspect of developing nations. In addition to that is the framework of the TRIPS agreement entails significant costs.²⁹

²⁷ Barrientos, S. *'Flexible' Female Employment and Ethical Trade in the Global Economy*. In P. Newell, S. M. Rai & A. Scot (eds.) *Development and the Challenge of Globalization*. London: ITDG Publishing, 2002, at 41–56.

²⁸ Barwa, S. & Rai, S. M. *The Political Economy of Intellectual Property Rights: a Gender Perspective*. In P. Newell, S. M. Rai & A. Scott (eds.) *Development and the Challenge of Globalization*. London: ITDG Publishing, 2002 at 41–56.

²⁹ Hindley, B.. *The TRIPS Agreement: the Damage to the WTO*. In M. P. Pugatch (ed.) *the Intellectual Property Debate*. Perspectives from Law, Economics and Political Economy. Massachusetts: Edward Elgar Publishing, 2006 at 33–43.

CONCLUSION

Initially we have looked into how the intellectual property has been evolved from the statutes of domestic nations, which later is incorporated to the international standards by the nations being a party to the TRIPS agreement through WTO and also a party to the WIPO.

The benefits of the intellectual laws being harmonised is focused on as there is a lot of significant impact of the same where there is a uniform standard laid for all the TRIPS agreement members.

It is been evidenced that powerful IPRs, exemplified by the TRIPS treaty of the WTO today, really have detrimental effects on poor countries. So they really make a huge significant contribution to the redistribution of wealth, all without making it possible for the nation to combat poverty, function properly and achieve self-sustainable development.

In the real world, however, the TRIPS treaty is unavoidable as it is a significant part of the whole WTO bundle. Although the mechanism is incredibly slow and also not guaranteed, some proposals are actually working to reform the system them. Positively, there are options that bring fresh frameworks compliant with proper legislation and enable new ways to generate and transfer the knowledge.

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