

INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]

ISSN: 2584-1513 (Online)

Volume 3 | Issue 2 [2025] | Page 246 - 252

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INTELLECTUAL PROPERTY RIGHTS IN GLOBALIZED ECONOMY

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ABSTRACT

As due to the increasing globalization it becomes critical to safeguard the intellectual property rights as because of transfer of trade and transfer of technology. As due to these interconnected countries the role of international organizations gets increase such as world trade organization, world intellectual property rights and European union which effects the rights of the people not only there are benefits but also some difficulties they create for intellectual property rights. This paper will examine that how their organizations effect the rights. Will go through the doctrinal research of case studies, legal principles and relevant litigations. This paper will show the balance between intellectual property rights and international IP organizations.

INTRODUCTION

"We have a duty as the state to protect our economy... We are for the protection of intellectual property."-Angela Merkel¹.

As the time of globalization is going on i.e. it is observed that intellectual property rights (IPR) have taken an important place due to increased connections between nations and economies. IPR is used by the governments as a legal instrument from centuries to support, promote and encourage the growth of industry and economic development.² These rights are used globally to protect the interest and exclusive rights of the creator; these laws have power to punish if anybody misuse or exploit the property without the permission of creator; these rules are made to protect the market globally.³

This paper will examine that what is the role of Intellectual Property Rights (IPR) in globalized economy. Will put light that how international agreements such as Trade-Related Aspects of Intellectual Property Rights (TRIPS) and role of international organizations such as World Intellectual property Organizations (WIPO) that has played their role to protect cross border intellectual property rights enforcement. And the challenges faced to protect intellectual

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¹ Angel Merkel, 'Best Quotes from Angela Merkel' (Victor Mochere, 2024) <https://victormochere.com/best-quotes-from-angela-merkel> accessed 27 September 2024.

² National Research Council, *Intellectual Property Rights and Research Tools in Molecular Biology* (National Academic Press, 1997) <https://nap.nationalacademies.org/read/2054/chapter/3> accessed 28 September 2024. ³ Govind Patidar, 'Impact of the Intellectual property Rights on Economic Growth and Development' [2023]

property rights in a globalized world. As innovation is the most important aspect of growth of economy in global economy, so it is important to protect innovations globally. However, markets are inter-connected. This research paper is going to follow doctrinal research. Will research about the legal principles, case studies and legislation related to intellectual property rights.⁴

RESEARCH QUESTIONS

As a result during the search about the topic, several research questions were identified but will focus on two main questions. They are as follows:

1. In this globalized economy what is the role of international organizations, such as World Intellectual Property Organization (WIPO) in intellectual property disputes.
2. Challenges faced to protect intellectual property rights in globalized economy due to impact of international treaties and the legal complexities of cross border enforcement.

ROLE OF INTERNATIONAL ORGANIZATIONS IN INTELLECTUAL PROPERTY DISPUTES IN GLOBALIZED ECONOMY

According to Washington international trade association globalization economy is increasing trade and financial flows around the world. It's the transfer of technology and ideas.⁵ In this globalized economy intellectual property have also taken place with increase of inter connectedness because of international trade and technology. Due to these countries are required to provide minimum level of protection to their patents, trademarks, copyrights and other Intellectual property Rights so that Intellectual property can be enforced worldwide in this light TRIPS agreement plays a wide role to set standards for protection of intellectual property. Globalized economy also increased IP infringements, counterfeit of goods, unauthorized use of Intellectual property, and also effecting rights of owners to enforce their rights across borders.

According to World Trade Organization Intellectual property rights are the rights which are given to the creator of the innovations which is created with their minds. It is an exclusive right

⁴ Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' [2013]

Legal Education Digest 41; (2013)21(3) *Legal Education Digest* 32.

⁵ 'Basics of Trade: Economic Globalization' (WITA) <https://www.wita.org/ustrade/basics-of-trade/economic-globalization/> accessed 22 September 2024.

over their invention for the certain period of time. There are two main areas in which intellectual property rights are divided:

Rights related to copyright

Copyright work includes the literary and artistic work which can be original literary, dramatic, musical, artistic work, cinematograph films and sound recording works; It also includes painting, computer programs and sculptures are protected under copyrights for a period of minimum 50 years even after the death of the author.

Rights related to industrial property

Industrial property includes the signs like trademark which is used to distinguish the product from one enterprise to another, and geographical indications which indicates that from which place good is originated. And the others are innovations, designs and the creations; this also includes trade secrets. If the patent is registered then the protection is given for the period of 20 years.⁶

Globalized economy refers to economic globalization it includes trade of goods and services, technology, ideas, labour, migration, ideas and capital flows around the world.⁷ This was the reason that why international organizations were made to protect intellectual property rights worldwide. so that the rights of the creators can be protect because they invest their time, money, effort in work. It will also help innovation and creativity to get promoted amongst people as it will benefit everyone; it also helps to remove trade related barriers and innovation related barriers; it provides a place for government, civil society and industry groups to address issues related intellectual property.

There are many international organizations which work and address the issues related intellectual property rights. Such as World Intellectual Property Organization (WIPO) - is the one of the most leading and important organization to resolve the disputes related to Intellectual property Rights; it plays the most critical role in IP disputes by using system of mediation and arbitration;⁸ World Trade Organization (WTO) - use to make agreements related to IP Rights such as TRIPS Agreement which provides rights related to intellectual property which sets the

⁶ World Trade Organization, 'Intellectual Property: Protection and Enforcement' (WTO) https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm accessed 28 September 2024.

⁷ World Trade Organization, 'The Basics of Trade: What is Economic Globalization?' (World Trade Organisation, 23 February 2023) <https://www.wta.org/ustrade/basics-of-trade/economic->

[globalization/#:~:text=In%20general%2C%20economic%20globalization%20broadly,through%20trade%20and%20financial%20flows](https://www.wta.org/ustrade/basics-of-trade/economic-globalization/#:~:text=In%20general%2C%20economic%20globalization%20broadly,through%20trade%20and%20financial%20flows) accessed 28 September 2024.

⁸ World Intellectual property Organization, 'About WIPO' (WIPO) <https://www.wipo.int/about-wipo/en/> accessed 28 September 2024.

standard in IP Protection;⁹ European Union Intellectual Property Office (EUIPO) – responsible to manage all the trademarks of European union and registered community design.¹⁰

International organizations play an important role; it helps to shape future of intellectual property worldwide. They set up new Intellectual property norms to forum exchange of ideas worldwide. It provides a platform for owner if their right is violated by any other person. WIPO plays the most important role in this as it helps to settle dispute and enforce IP rights. It is the agency which is part of united nations (UN) which helps to serve the creator's and inventor's worldwide; helps creators to solve their IP issues cross border and address issues related to Intellectual property. They use to provide data which provides information guide, technical assistance and impact driven projects so that Intellectual property can benefit everyone. WIPO use to follow two different ways to solve a dispute weather its cross-border issue; by the way of arbitration and mediation. As arbitration is a private procedure to resolve the dispute without going to court and in mediation, mediator use to help the parties to mutual settlement by doing contract. Which also helps parties to continue good business relations. WIPO plays very important role in this globalized economy to solve disputes related to intellectual property rights as they are having their expertise in intellectual property rights i.e. they are masters to solve the dispute related to intellectual property rights as they include experts from different countries; as they also have neutral and an international platform for dispute resolution they are not bound to single country legal framework they use to play biased role; they have faster procedure then international courts to resolve the issue and it is very important due to fast businesses in fast globalization.¹¹

On the other hand, World Trade Organization provides Trade Related Aspects of Intellectual Property Rights (TRIPS) which sets minimum standards for Intellectual property protection and enforcement of it. Came into force on 1st January, 1995 during the time of globalization. It provides protection to various intellectual properties such as copyrights- includes authors, musicians, artists, and etc; trademarks- brand names and logos; geographical indications- like champagne and Darjeeling tea; patents- inventions and innovations; industrial designs- design of any product; trade secrets, and plant variety protection. There are the three main features of the agreement which are:

1. Standards: Trade Related Aspects of Intellectual Property Rights (TRIPS) provide minimum standards of protection which is provided to each member. Standards are sets on Paris Convention and Berne Convention.

⁹ World Trade Organization, 'Intellectual property: Protection and Enforcement' (WTO) https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm accessed 28 September 2024.

¹⁰ European Union Intellectual Property Office, 'Home' (EUIPO) < <https://www.euiipo.europa.eu/en> > accessed 28 September 2024.

¹¹ World Intellectual Property Organization, 'How to Settle IP Disputes' (WIPO) < <https://www.wipo.int/sme/en/settle-ip-disputes.html> > accessed 28 September 2024.

2. Enforcement: it provides three procedures which includes civil and administrative procedure which allow the author to enforce their rights; provisional measure to prevent infringement; and criminal penalties to stop wilful trademark infringements.

Dispute settlement: if one country notice that other country is infringing rights then they can bring matter to world trade organization under Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement.¹²

The European union intellectual property office (EUIPO)¹³ is a European union agency which deals or manages European trademarks regarding registrations of European member states. This organization allows protection with a single registration; they have power to cancel any registration of trademark if any other person think that their trademark is getting infringed by other person.

In short, these international organizations help to enforce and safeguard rights of intellectual property i.e. they create a system which is balanced in support of trade, innovation and public welfare globally.

CHALLENGES FACED TO PROTECT INTELLECTUAL PROPERTY RIGHTS IN GLOBALIZED ECONOMY

It is a challenge in today's globalized economy to protect intellectual property rights across international borders. As also stated by Robert Sherwood in his book named as 'The global challenges of intellectual property rights' that there are various challenges related to intellectual property rights.¹⁴ The basic first key challenge to protect is that every country has its own culture, views and policies on intellectual property; second key challenge is that evolution of technology by sharing digital platforms and sharing of files which is creating difficulties to protect copyrights; third is different countries have different approaches; fourth is jurisdiction complexities as it will create delays in enforcement process.¹⁵ Ruth L. Okediji In his article have written that how developing countries enforce intellectual property rights across global and how under developed countries enforce these rights¹⁶

¹² Overview: The TRIPS Agreement' (WTO) https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm accessed 2 October 2024.

¹³ EUIPO, 'European Union Intellectual Property Office' (EUIPO, 3 October 2024) < <https://www.euiipo.europa.eu/en>> accessed 3 October 2024.

¹⁴ Robert Sherwood, *The Global Challenges of Intellectual Property Rights* (Westview Press 1997).

¹⁵ ScoreDetect, 'Cross-Border Copyrights Protection: Challenges and Solutions' (ScoreDetect Blog, 28 September 2022) < <https://www.scoredetect.com/blog/posts/cross-border-copyright-protection-challenges-and-solutions>> accessed 2 October 2024.

¹⁶ Christopher Heath, 'Intellectual Property Enforcement and the Global Anti-Counterfeiting Regime' (2003) 7

Singapore Journal of International & Comparative Law 409 <

<http://www.commonlii.org/sg/journals/SIGJIntCompLaw/2003/14.pdf>> accessed 2 October 2024

According to WIPO as states by Professor Hargreaves stated in his report in 2010¹⁷ that “intellectual property rights are difficult to succeed in their core economic function of incentivizing innovation if rights are disregarded or re too expensive to enforce.”¹⁸

There are a lot many challenges which are faced to protect intellectual property rights in this globalized economy which are: -

1. According to today’s situation digital technology have increased day by day which have made more difficulty to protect IPR. As it’s spreading over copyright material.
2. As TRIPS agreement provides opportunities to countries but some organizations misuse it.
3. The main challenge is registering issue as there are many companies which don’t register as because it might be issue of some conventions or rules because if our home country is not registering intellectual property then no other country can register property.
4. There is issue of backlog, registry issue, delays in trademark and patent registration as there might be lack of awareness¹⁹.
5. Another challenge is as WTO created TRIPS agreement and TRIPS establishes a common framework which is good for developed countries but developing countries may have to struggle because of policy priorities.
6. As Paris convention provides time period of six months for trademark and 12 months for patents under which they have to register in register in other country if it is registered in their home country.
7. Berne convention provides minimum protection.
8. Different countries have different policies or time periods for the registration

¹⁷ UK Government, ‘Launch of Intellectual Property Enforcement Strategy’ (GOV.UK, 22 May 2016) <
<https://www.gov.uk/government/speeches/launch-of-intellectual-property-enforcement-strategy>> accessed 3
October 2024.

¹⁸ WIPO, ‘The Challenge of Protecting IP in the Digital Age’ (WIPO Magazine, 2016) <
https://www.wipo.int/wipo_magazine/en/2016/si/article_0004.html#:~:text=The%20challenge%20of%20protecting%20IP&text=Professor%20Hargreaves%20stated%20it%20quite,than%20no%20rights%20at%20all%E2%80%A6%E2%80%9D> accessed 3 October 2024.

¹⁹ Abounaja Intellectual property, ‘Intellectual Property Challenges’ (Abounaja, 2022) <
<https://abounaja.com/blogs/intellectual-property-challenges>> accessed 3 October 2024.

9. Madrid system creates problem as if home country reject trademark within 5 years, then it can collapse international registration.
10. High cost of patent registration.

CONCLUSION

In globalized economy it is becoming difficulty to protect intellectual property rights as it is becoming complex with all the challenges stated above which is created by different organizations, principles or conventions. As WIPO and other organization may provide relaxation but still, they create some challenges as cost, territoriality and inconsistent enforcement and many other. And some challenges because of increasing trade and transfer of technology cross border. Which increase copyright and counterfeit goods and services. Organizations must work according to increasing globalization and challenges faced during registrations.