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AN ANALYSIS OF TRIPS AGREEMENT IN PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

TARUN BALHARA*

ABSTRACT

Any organization needs intellectual property assets, which require a major investment of time, money, and creative energy and may or may not be tangible. Internet technology is developing faster than international IP law, which is making an effort to catch up. Making the internet a usable, inexpensive, and competent platform for international trade that can handle astounding levels of trade is the goal. Technology advances have created unmatched opportunities for economic growth during the past 10 years. The interests of exporters of goods or technologies integrating IP were at odds with those of importers or copycats of such goods or technologies.

The quicker and less expensive methods of communication and transportation, such the Internet, which have enhanced the ease of imitation, have given birth to a significant and ongoing need for upgrading the worldwide legal framework for the protection and enforcement of IPR. An important result of this development is the adoption of legal frameworks that will enforce high standards and support the nation's respective economic progress. A striking example of this phenomenon is the creation of new IPR that aim to protect the rights of the legal author by forbidding the transmission of protected information over the internet. This article is intended in order to offer a thorough knowledge of the advantages and disadvantages of the TRIPS Agreement as well as how India's current IPR framework protects the creator in the age of globalization.

Keywords: TRIPS, Intellectual Property Rights, Trademark, Copyright, compliance.

* LLM Student at Amity Institute of Advanced Legal Studies, Noida.

HISTORICAL PERSPECTIVE OF IPR

IP has an interesting and complicated history that dates back many centuries. When Sybaris, a Greek state, allowed its residents to receive a one-year patent for each new improvement in luxury, it practically marked the beginning of the era. IPRs, like as patents and copyright, developed into their current forms in the nineteenth century as Europe and North America through a fast industrialization process.[1] Throughout the centuries that followed, rules grew more intricate, but their purpose remained the same. The purpose of IPR laws is to promote creativity and allow inventors to profit from their innovations.

Before certain significant and well-known legislation was written in mediaeval Europe, IPR law was hardly ever understood. The Statute of Monopolies, a British statute that was enacted in 1623, was the first of them. During that time, guilds controlled all significant industries and were in charge of introducing all new developments to the market, thereby granting them ownership and control over inventions even if they had no involvement in their conception. The author or innovator might keep their ownership rights under the Statute of Monopolies. The innovator was also granted a 14-year window of exclusivity under the statute. The Statute of Anne, another important piece of law, was introduced in 1710. This statute also offered protection for a period of 14 years. Moreover, it granted the inventor the chance to ask for a 14-year extension. This Act's primary goal was to safeguard the copyrights that gave authors the freedom to repurpose and distribute their works.

Most of the 13 colonies had their own systems in place for protecting IPR by the time the United States broke away from Great Britain. The formation of federal legislation that took precedence over various state laws resulted from the realisation that issues would arise if each state operated its own system of IPR protection.

Patents have been awarded over the years for a range of public policy objectives, including foreign technology, innovative activities, and new information that will assist and allow firms to safeguard their investments in R&D. The English Statute of Monopolies from 1624 was one of the first patent laws[2]. The rule was meant to discourage monopolies rather than to foster innovation, and the government wanted to attract foreign artisans to the nation. Monopoly awards were only permitted with regard to the genuine and original inventor(s) of any new manufactures within this

[1] D Giugni, V. Giugni, 'Intellectual Property: a powerful tool to develop biotech research', 3(5) Microb Biotechnol 493-506 (2010).
[2] The English Statute of Monopolies 1624.

field, as long as doing so did not violate the law or harm the state by driving up the cost of domestic goods. These innovators were given monopoly protection for up to 14 years. As judges believed that the goal of granting patents was to introduce new trades to England, whether or not they were unique elsewhere in the world, strict novelty was not necessary.

The first modern patent statute was the United States Patent Act of 1836.[3] It mandated that the government patent office review each application for novelty and utility. Notwithstanding the fact that this statute did not differentiate between American and foreign inventors in terms of the review process or the scope of the rights awarded. Foreign candidates were required to pay significantly higher fees, particularly if they were British. For citizens of nations with laws that did not discriminate against Americans, such discrimination was outlawed in 1861. Throughout a significant portion of the nineteenth century, certain European nations operated without a patent system. In 1883, the Paris Convention was founded. Due to a global agreement, inventors were able to protect their discoveries even when they were applied abroad.

The most well-known copyright statute, The English Statute of Anne of 1710,[4] is Italian in origin. Early copyright laws were more concerned with protecting domestic printers' interests than those of authors. Although it was intended to both encourage intelligent persons to develop and compile good publications and to stop illicit printing, reprinting, and publishing of books and writings. This statute gave the permission to publish and reproduce books with titles listed in the registration book of the Company of Stationers for a set period of time. Comparatively to the Anglo-American nation, continental Europe's copyright laws showed a lot more respect for authors' artistic integrity. The eighteenth century saw the first contemporary changes to copyright law.

Yet, the Berne Convention of 1886 resulted in the protection of all textual forms of expression, as well as drawings, sculptures, paintings, and more, on a global scale. The length of the protection period lengthened, the law started to cover a wider range of topics, and there were more international agreements signed during this century as a result of which national standards became more uniform and opportunities to obtain stronger protection for creative works in more nations were greatly increased. Subject-wise, copyright law has been expanded to cover artistic, musical, and literary works as well as computer programmes, sound recordings, films, broadcasts, cable shows, typographical arrangements, and computer-generated works. Moreover, protection was provided in accordance with the Berne Convention for the Protection of Literary and Artistic

[3] United States Patent Act 1836.
[4] The English Statute of Anne 1710.

Works' criteria, which encompassed writers' moral rights, and was not just of an economic character.

National copyright rules have historically been less accommodating to foreign interests. This is due to the fact that granting foreigners the right to protect their creative works does not have the same clear economic benefits. For many years, the copyright legislation in the United States included a provision known as the manufacturing clause, which demanded that all literary works protected by copyright be printed there. The goal of this protectionist measure was to help American printers. Following the establishment of the TRIPS Agreement by the WTO, practically all of the most significant IPRs now have enforceable global minimum standards of protection and enforcement.

TRIPS AGREEMENT

The TRIPS Agreement was negotiated and finalized during the global trade discussions that were a part of the GATT's Uruguay Round. The outcome of seven years of talks, from September 1986 to December 1993, TRIPS, which substantiates copyrights and related rights (i.e., the right of performers, producers of sound recordings, and broadcasting organizations), eventually went into force on January 1, 1995; industrial designs, geographical indications, including appellations of origin, trademarks, including service marks, patents, and the protection of novel plant species; the layout designs of integrated circuits; and unreleased data, such as test results and trade secrets.[5] These negotiations started in Punta del Este, Uruguay, and were officially concluded in Marrakesh, Morocco, in April 1994, along with the other Uruguay Round meetings.

After reaching a consensus on all of the negotiating topics in April 1994, the WTO Agreement was finally put into effect one year later in January 1995. The wealthy nations and the developing countries had a fierce argument, but in the end, they were able to come to an agreement on the TRIPS agreements. The deal was finalized with a single commitment being made by each party. The TRIPS Agreement was unfavourable to developing nations; Nevertheless, there were other aspects of the discussions that led to conclusions that were favourable to these countries; as a consequence, an agreement was reached for the entirety of the negotiations. Throughout the process of negotiating the TRIPS, developing nations failed to build effective structures for consultation with civil society and commercial interest groups. This led to challenges in putting the TRIPS into effect.

[5] Ms. Dariel De Sousa, 'Protection of Geographical Indications Under the TRIPS Agreement and related work of the World Trade Organization (WTO)' [2001] WIPO 15.

Due to the fact that they were unable to coordinate their positions with those of other nations that shared their views and the secrecy surrounding the negotiations, it was impossible to reach a sensible compromise solution that included suitable transitional periods. The TRIPS could have been easier to put into effect if developing nations had been given a sufficient amount of time to adjust to the changes that were being asked of them.[6] The demandeurs have acknowledged that there is a requirement for more time to embrace changes in the rules governing IPR.

In the latter part of the 1990s, an informal drafting group comprised of ten industrialized nations and ten developing countries worked together to create the framework for the TRIPS accord. The task of negotiating the text was given to a select group of individuals from developing countries, who faced up against much bigger and more experienced teams of negotiators from wealthy nations. The arguments that were presented during these sessions of writing were, for the most part, spoken verbally and were not recorded in any formal document.

In the second half of 1990 a group of ten developed and ten developing countries drew up a draft of the TRIPS agreement. The text was left to a few developing country negotiators who fought against the larger, more skilled negotiating teams of industrialized countries. The arguments that were made during these drafting sessions were not recorded in an official record.

CONCLUSION

To sum up, the TRIPS Agreement has had a big impact on how well intellectual property rights (IPRs) are protected globally. Members of the World Trade Organisation (WTO) have pledged to create and uphold thorough legal frameworks for protecting different types of intellectual property, such as patents, trademarks, copyrights, and trade secrets, since the organization's founding. By guaranteeing that inventors, artists, and creators may enjoy exclusive rights over their creations, this agreement has offered a key platform for promoting innovation, creativity, and economic progress.

The TRIPS Agreement's implementation and efficacy have both strengths and limitations, according to the report. Positively, the agreement has been effective in bringing member nations' intellectual property norms into line, encouraging the fair and equal treatment of IPRs.[7] It has

[6]National Academies of Sciences, Engineering, and Medicine, *International Conflict Resolution After the Cold War* (The National Academies Press 2000).

- [7] Stephen Ezell and Nigel Cory, 'The Way Forward for Intellectual Property Internationally' (2019) ITIF <https://itif.org/publications/2019/04/25/way-forward-intellectual-property-internationally/ > accessed 24 May 2023.

promoted the creation of strong legal frameworks that have improved the protection and enforcement of intellectual property rights. Furthermore, both developed and developing countries have benefited from the agreement's facilitation of technology transfer and international cooperation.

However, there are still some difficulties. The balance between encouraging innovation and providing access to necessities, especially in the domain of medicines, is one of the main issues. It's still difficult to strike a compromise between safeguarding patents and providing underdeveloped countries with inexpensive access to life-saving medications. The TRIPS Agreement has also been criticism for its ability to obstruct the transfer of technology to developing nations, since the strict protection of IPRs may restrict such nations' access to knowledge and technology. The fast development of digital technology has also created new difficulties for the protection of intellectual property rights. In order to successfully fight internet piracy and copyright violations, new procedures must be developed and international collaboration is required.