

## INTELLECTUAL PROPERTY RIGHTS UNDER CORPORATE LAW

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### INTRODUCTION

The supremacy of a nation and its citizens is based on authority over property laws. It could be argued that the most basic tool available to a state for self-development planning is property. The state has the authority to determine who controls resources, who may use them, who benefits and who loses by modifying the definition of property, establishing new property rights, and eliminating existing rights. An agreement on intellectual property rights that establishes universal standards and enforcement mechanisms for all governments who are members of the Agreement Establishing the World Trade Organisation (WTO Treaty) has been developed via trade liberalisation processes. A set of international intellectual property standards is essentially globalised under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. The creation of TRIPS did not result from well-planned economic research. Instead, it was an outward sign of the multinational corporations' rent-seeking tendencies as they recognised chances to redefine and expand intellectual property rights internationally.<sup>1</sup>

### STRUCTURES AND OBJECTIVES OF INTELLECTUAL PROPERTY RIGHTS

For a certain amount of time, a patent gives its owner the exclusive right to prevent anybody else from creating, marketing, purchasing, or employing the procedure or product described in the patent. Because it grants exclusive rights to the tangible embodiment of ideas with industrial applicability such as items, designs, plans, and formulas which are considered to be the most significant instrument in the IPR system. These are also among the most contentious types of intellectual property rights since they safeguard goods and technology that nations that want to be followers hope to get. This is especially true in important industries where the general good may demand widespread distribution at reasonable costs.

Copyrights safeguard authors' and artists' rights to distribute, exhibit, and perform their works in any media as well as to create and market copies of them. Instead of protecting the concept

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<sup>1</sup> <https://www0.anu.edu.au/fellows/pdrahos/articles/pdfs/1997thinkingstratippolicy.pdf>

itself, copyright rules safeguard how an idea is expressed, including how it is arranged and presented in words, music, dance moves, colours, and other media. Traditionally, concepts in literature and the arts are not applicable to the real world, which sets them apart from innovations that may be patented. Therefore, the inspiration to create a painting of a mountain cannot be shielded from those who would like to create one as well.

The right to use a certain distinguishing mark or name for identifying a good, service, or corporate name is protected by trademarks and service marks. When it comes to the distribution of products and services, these markings are crucial. Due to the infinite number of possible trademarks, they usually simply need to be registered, with the option for others to dispute the registration of a trademark if it is proven to infringe on a prior mark. Usually, trademarks can be perpetually renewed by regular re-registration.<sup>2</sup>

## **INTELLECTUAL PROPERTY AND TECHNOLOGICAL ADVANCEMENT IN UNDERDEVELOPED NATIONS**

In developing nations, the preservation of intellectual property rights (IPRs) has generated a lot of discussion in recent years. The topic is commonly framed within a North-South framework, with the prevailing belief suggesting that safeguarding intellectual property rights tends to disadvantage southern (the disadvantaged) countries. The cause for this loss is due to static and partial equilibrium since the protection of intellectual property rights would increase the market power of innovative northern enterprises and drive up prices in emerging nations. However, even after accounting for general equilibrium and dynamic considerations, the South does not always gain from a rise in IPRs. This is partially because of the negative terms-of-trade impact and the potential gradual slowdown of northern advances.

However, there are several justifications for developing nations to enhance their intellectual property rights safeguards. First, according to Diwan and Rodrik (1991), northern and southern nations often have distinct technological demands. Northern nations would not produce innovations that the South primarily needed if the South did not have Southern IPR protection. Second, in response to the absence of intellectual property rights in the South, northern businesses may choose to increase the barrier to imitation for their innovations. This might lead to less effective research technology and a decline in northern invention. Third, there are advantages associated with international collaboration that strengthen IPRs in

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<sup>2</sup> Maskus Keith E. *The economics of intellectual property rights and globalization dancing the dual distortion.*

developing nations regardless of whether it immediately helps the South or not. This is because increased IPR protection may still improve global welfare. In real life, trade-related intellectual property rights (TRIPS) have been a major topic of discussion in WTO talks, and developing nations' admission to the WTO is frequently contingent upon the strengthening of their IPRs. Significantly, these justifications for robust southern intellectual property rights appear to imply that the southern developing nations would not have much motivation to safeguard intellectual property rights if it weren't for North American pressures or strategic responses.<sup>3</sup>

### **QUANTIFYING THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

As the world's focus on intellectual property rights (IPR) concerns has grown, academics have started to pay greater attention to attention to IPR protection and its financial effects measuring IPR protection has proven to be one challenge in this research. Previous attempts to capture IPR protection appear to have been constrained in that they paid more attention to the rules themselves than to the ways in which nations implement them. But in light of the World Trade Organization's Trade-Related aspects of the Intellectual Property Rights (TRIPS) agreement, the enforcement component's significance becomes even more crucial. By 2006, the majority of nations must comply with the minimal criteria for intellectual property rights protection, as mandated by the TRIPS agreement. When it comes to the actual protection of intellectual property rights, the ways in which different countries implement their legal frameworks will set them apart. Particularly in commercial ties between rich and developing nations, the implementation of intellectual property rules has been a crucial problem. Consequently, evaluating the effectiveness of national efforts to safeguard intellectual property will depend heavily on how these activities are measured.<sup>4</sup>

### **RIGHTS TO INTELLECTUAL PROPERTY AND STANDARDISATION: THE GSM CASE**

Public interests are the driving force behind the development of competition legislation, standards, and intellectual property rights (IPRs). Standardisation can mitigate several drawbacks associated with an excessive range of goods, services, or approaches. Without

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<sup>3</sup> Chen, Yongmin, and Thitima Puttitanun. "Intellectual Property Rights and Innovation in Developing Countries." *November 2004*.

<sup>4</sup>[https://www.jstor.org/stable/pdf/155642.pdf?casa\\_token=FQcAhrEnW0YAAAAA:7iWJrm0e6IeHEua\\_QcT1sXo0EBZEz1AUtdIk3SdxOuDigzJgGdz33vz\\_1eGcnbQy4ArSHt7v7cqDI9pz6jlpZ\\_gssqESg-gcjzYyezWBL3EZFYzXQVPC](https://www.jstor.org/stable/pdf/155642.pdf?casa_token=FQcAhrEnW0YAAAAA:7iWJrm0e6IeHEua_QcT1sXo0EBZEz1AUtdIk3SdxOuDigzJgGdz33vz_1eGcnbQy4ArSHt7v7cqDI9pz6jlpZ_gssqESg-gcjzYyezWBL3EZFYzXQVPC)

standardisation, conflict between various technical systems could arise, leaving customers stuck with outdated technology that eventually disappears from the market. These customers may, of course, incur significant switching expenses if, for example, they must destroy outdated equipment. Standardisation benefits producers by increasing economies of scale, which may result in a drop in the cost of consumer items related to the standard.

A framework of intellectual property rights is frequently required to guarantee that people or businesses would engage in new activities. Imitation (e.g., by reverse engineering of items) will reduce the inventor's profit rate in the absence of intellectual property rights (IPRs) to information deriving from an invention, hence lowering the incentive for innovative activity. An intellectual property right (IPR), such as a patent, gives the creator a monopoly on the invention's economic exploitation. In addition to being shielded from market rivalry, intellectual property rights holders are also viewed as advocates for innovation. Competition law works to maintain and grow competition in order to advance economic and consumer welfare.

The Global System for Mobile Communications (GSM) is one of the earliest instances of a significant conflict between intellectual property rights and standardisation. But in the end, GSM was a commercially and technologically viable standard. When discussing the conflict between intellectual property rights and standardisation, we used the GSM sector as a case study. The significance of standards in the telecommunications sector is growing, and with it, so is the need to comprehend how to develop standards that work. This is made even more apparent by the (strong) worldwide trend that policymakers and legislators have been following for more than 20 years towards a more liberal and open market stance. The GSM standard is primarily a de jure standard, and it is developed through a very different procedure than standards that are developed for the market. However, we believe that the IPR problem is crucial for all standards, but in the case of market standards, intellectual property rights (IPR) disputes will often be resolved differently with less influence from semi-public entities during discussions.<sup>5</sup>

## CONCLUSION

In conclusion, the complex interactions between corporation law and intellectual property

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<sup>5</sup> [https://www.researchgate.net/profile/J-Smits/publication/323187008\\_Intellectual\\_property\\_rights\\_and\\_standardization\\_the\\_case\\_of\\_GSM/links/5ae8afe90f7e9b837d3af015/Intellectual-property-rights-and-standardization-the-case-of-GSM.pdf](https://www.researchgate.net/profile/J-Smits/publication/323187008_Intellectual_property_rights_and_standardization_the_case_of_GSM/links/5ae8afe90f7e9b837d3af015/Intellectual-property-rights-and-standardization-the-case-of-GSM.pdf)

rights (IPRs) have a major influence on both technical innovation and global economic growth. Intellectual property rights (IPRs), including patents, copyrights, and trademarks, are vital instruments for safeguarding inventions and artistic expressions, promoting a competitive atmosphere that propels advancement. Though it largely serves the interests of industrialised countries, the TRIPS agreement, which is part of the WTO framework, is an example of how these rights are standardised globally. Strict IPR protections can be problematic for poor nations because they raise prices and restrict access to technology, but they can also be advantageous because of global partnerships and customised technical breakthroughs. The GSM scenario emphasises how important standards are to harmonising technology systems and encouraging broad adoption. All things considered, fair global economic development depends on striking a balance between IPR enforcement and the demand for accessible innovation.

