

THE IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS IN MODERN SOCIETY

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Human beings have the unique ability to express ideas, knowledge and information in numerous ways. Ideas have led to the creation of various ground breaking innovations in the fields of Science, Technology and Medicine which has enabled society to evolve at a rapid pace. Inventions such as the printing press, the steam engine, the telephone and the light bulb were the result of ideas thought of by visionary innovators. The expression of ideas is a fundamental right of human beings and its importance is evident in almost all the countries across the world and is the basis for modern democracy. People express ideas to gain personal satisfaction, to create new inventions and also as a means of earning an income. Intellectual Property law is the area of law that protects applicants of ideas and information that are of commercial value¹.

It is the legal right which results from the industrial scientific, literary and artistic field. The right gives the owners of intellectual property the legally enforceable

power to prevent others from using an intellectual creation or set the terms on which it can be used. The existence of proper Intellectual Property (IP) laws provides incentive for people to dedicate time, energy, and money to research and develop new inventions, lifesaving medication and also create new artistic and literary works. With rapid globalization and increase in the world's population the need for advancement in the fields of science and technology is as important as ever. Intellectual Property law is essential for the protection of these new ideas.

The origin of IP law in the UK and also the world can be traced to the Elizabethan era with the creation of the Statute of Monopolies which protected patents, and the Statute of Anne which protected copyrights². Intellectual Property law gained prominence during the industrial period in order to protect the ideas and inventions of the inventors.

¹ W.R Cornish, *Intellectual Property: Patents, Copyright, Trademarks and Allied Rights*. (4th edition, 1999)I

² "An explanatory note concerning the origins of the United Kingdom intellectual property legal regime"
<https://www.wipo.int/export/sites/www/wipolex/en/notes/gb.pdf>

Dr. Peter Drahos divides the history of IP in to three periods. The first period referred to as the “*Technical Period*” lacked international intellectual property protection. During the second period known as the “*International Period*” the *Paris Convention for the Protection of Industrial Property 1883* and the *Berne Convention for Protection of Literary and Artistic works 1886* were officially drafted. The third period referred to as the “*Global Period*” saw the creation of the Agreement of the *Trade Related Aspects of Intellectual Property Rights* (TRIPS agreement) in 1994³. The aim of the TRIPS agreement is to set out the minimum standard of IP regulation with the territory of World Trade Organization.

Intellectual Property is categorized in to fields and includes Patents, Copyrights and Trademarks which are the most important parts of IP rights. However importance is also placed on Industrial Design and Trade Secrets.

- Patents: A patent is a form of right granted by a government to an inventor, giving the owner the right to exclude others from making, using, selling, and importing a invention for a limited period of time in exchange for public disclosure of the invention. An invention is a solution to a specific technological problem and must generally fulfill three

³ Dr. Peter Drahos, “*the Universality of Intellectual Property Rights: Origins and Development.*”, <http://www.wipo.int/edocs/mdocs/tk/en/wipo_unhchr_ip_pnl_98/wipo_unhchr_ip_pnl_98_1.pdf>

requirements. It has to be new; must be inventive; and need to be industrially applicable.⁴

- Copyright: Copyrights is a right given against the company of works listed in section 1 (1) of the Copyrights, Designs and Patents Act 1988 which include literary, dramatic, artistic and musical works. Copyrights last for a life time of the author plus 70 years. The author’s rights are laid down in section 16 of the Copyrights, Designs and Patents Act 1988. The author has the right to stop anyone from reproducing the work, performing the work and issuing copies to the public.⁵
- Trademark: A trade mark is a recognizable sign, design or expression which distinguishes products or services of a particular trader from the similar products or services of other traders. The Trade Marks Act 1994 lays down the law relating to trade marks in the United Kingdom.

The importance of intellectual property is evident as countries go to great extents to protect IP rights within their territories. In 1967 the World Intellectual Property Organization was created to “Encourage creative activity, to promote the protection of intellectual property throughout the

⁴ <https://www.wipo.int/export/sites/www/about-ip/en/iprm/pdf/ch2.pdf>.

⁵ Copyrights, Designs and Patent Act 1988.

world”. The TRIPS agreement was created in 1994 and introduced intellectual property in to the international trading system for the very first time.

In Sri Lanka the law relating intellectual property is currently governed by the Intellectual Property Act No. 36 of 2003 and the act was designed to provide efficient procedure for registration, control and administration of Intellectual Property in Sri Lanka.

According to the International Chamber of Commerce the system of IP law is designed to benefit society as a whole. It is a well known fact that the granting of a right over an intellectual property enables a right holder to exercise control over the use of his work over a certain period of time. In return for granting such rights the International Chamber of Commerce states that the intellectual property system contributes to the society by enriching the pool of public knowledge and culture; maintaining fair competition and encouraging the production of quality goods and services; underpinning the economic growth and employment and sustaining innovation and creation.

One of the most accepted reasons for the justification of intellectual property rights is the impact that such rights have on economic development. The WIPO Intellectual Property handbook states that one reason for the existence of IP law is to encourage fair trading which would

contribute to economic and social development⁶.

The Anti-Counterfeiting Trade Agreement (ACTA) states that “effective enforcement of IPR is critical to sustaining economic growth across all industries globally”. In the modern era many countries across the globe have businesses within their economy which rely heavily on IP protection. Such businesses may engage in activities in the fields of science, medicine, technology and productions of goods and services. These businesses range from large multibillion dollar corporations to small and medium sized enterprises which contribute as a whole to the economic growth of a country. As a result governments in numerous countries have made it a priority to create strong and effective IP laws which can be used by right holders to enforce their rights both in a national and international level.

An economy will develop through the foreign investment directed towards such companies. Developing countries will gain a significant advantage in developing their economy through the means of technology transfer, Technology transfer is the process of transferring skill, knowledge, technologies, methods of manufacturing and facilities among countries, governments, and universities to ensure that scientific and technological developments are accessible to

⁶“The Concept of Intellectual Property”
<<https://www.wipo.int/export/sites/www/about-ip/en/iprm/pdf/ch1.pdf>>.

a wide range of different countries⁷. In order for such a transfer to be effective, developing countries should have an efficient intellectual property system. Through technological transfer countries will be able to create new inventions and products which will directly affect the economic growth in the country.

Protection of IPR will also increase the employment rates in both developed and developing countries as multinational corporations and small businesses will seek to employ people skilled in the relevant fields of research and development. As a result it will lead to economic growth and a higher standard of living within the society.

In order to fuel economic growth innovators must produce new inventions and creations within their respective fields of study and occupation. In order to do so, they must be provided with an incentive to dedicate time, energy and money in the pursuit of developing new technology which can be used to create new innovations that help better our everyday life. This can only be done under a strong IPR system. A strong IPR system will help innovators to benefit from their inventions while at the same time preventing others from copying and taking unfair advantage from the inventors product. Providing such an incentive will result in the creation and development of many new products and inventions in the fields of medicine, science, transport, computer

engineering etc, and will also guarantee that the time, money and energy spent will be rewarded by adequate compensation . Inventors will seek to earn a living by creating such products and effective IPR protection will enable them to do so. Businesses often invest large amounts of money in research and development and in the marketing and advertising of their products. these risks would not be taken if not for the incentive provided by IPR.

Society today is also experiencing a decline of natural resources due to ever increasing climate change and global warming. In order to combat these problems it has become a priority in many countries to find new ways of creating sustainable agriculture; decreasing the use of fossil fuel and increasing the use of solar and wind energy in order to reduce the effect of greenhouse gases on the climate. Strong laws which govern patents are a key to help innovators to pursue research and development as they are guaranteed that their inventions which benefit society will be protected. Similarly the healthcare sector depends on IPR to support research and development in creating new medicine in order to combat ever increasing diseases such as cancer, zika, aids dengue etc. The pharmaceutical industry spends billions of dollars on research and development in the pursuit of creating new medicine to help society. Strong IPR also ensures consumers that the goods they purchase originated from a reputed company who ensures that the

⁷ <https://en.wikipedia.org/wiki/technology-transfer>.

goods are safe and are of quality. Intellectual property such as trademarks enables consumers to identify between competing brands and choose the best product that suit their needs.

Intellectual property rights are also justified as being important in modern society as it is closely connected with the principle of human rights. This is evident by the fact that intellectual property is enshrined as human rights in the Universal Declaration of Human Rights. **Article 27 of the UDHR** provides “(1) Everyone has the freely to participate in cultural life of the community, to enjoy the arts and to share in scientific advancement and it’s benefits; (2) Everyone has the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is author”. These rights are further emphasized by Article 15 of the International Covenant of Economic, Social and Cultural Rights 1966, Article 19 of the International Covenant on Civil and Political Rights 1966, the Vienna Declaration and Program of Action 1993 and other international and regional instruments. People in a given society have the right to express their ideas through various ways such as by way of literary works, dramatic works, and artistic works or by the creation of a invention. Freedom of expression is considered a fundamental right which is protected by protected by almost all countries through various systems of laws. Intellectual property law is one of those methods.

According to Laurence R. Helfer intellectual became an important part of human rights due to two reasons. The first reason was to use effective IPR enforcement in order to protect the rights the indigenous people had in their traditional knowledge and culture, and secondly due to the creation of the TRIPS Agreement created in 1994 ⁸ . According to many academics the connection between IP and human rights is a relationship of complexity.

The existence of IPR even though important has also been met with criticisms. One criticism is the fact that granting patents valid up to 20 years prevents others from producing a similar product due to the monopoly that is granted by a patent. According to Michele Boldrin and David K. Levine intellectual property should be called “intellectual monopoly”⁹. They argue that current IP laws take away the freedom of a person to use a particular product in any way they want. Another criticism made by many is that strong IPR systems have a negative impact on developing counties.

In September 2002 the Commission on Intellectual Property Rights established by the United Kingdom Government published a report which stated that the IPR system is

⁸ Laurence R. “Helfer, Human Rights and Intellectual Property: Conflict or Co-existence?” , <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2635&context=faculty_scholarship >

⁹ Michele Boldrin, David K. Levine, “The case Against Intellectual Property”, <<https://levine.sscnet.ucla.edu/papers/intellectual.pdf>>

not as beneficial for developing countries as for industrial countries¹⁰. According to the Commission a country should create IPR systems according to their state of development.

It is evident that the existence of strong Intellectual Property Rights aids modern society in numerous ways. As a result there is a need for strong enforcement of IPR which will reduce counterfeit and illegal goods from being manufactured and sold around the world. The creation of counterfeit goods has been linked to loss of profit to multinational corporations and small businesses. The International Chamber Commerce estimates that the value of counterfeit goods to have reached 1.7 trillion dollars.

Therefore protection of Intellectual Property Rights is an issue to which governments and industries have assigned high priority in recent years. This is reflected in the actions that have been taken in a number of areas. Multilaterally governments have established an agreed frame work for recognizing and enforcing Intellectual Property Rights both in a national and international context through the TRIPS Agreement created in 1994. In addition, governments have been working closely with international institutions such as the World Intellectual Property Organization (WIPO), World Trade

Organization, and World Customs Organization and Interpol among others to improve enforcement. In the European Union, Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 was created to set out measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights in the European Union¹¹.

The absence of Intellectual Property Rights will result in a under developed economy and reduction in creativity and inventiveness which will result in lack of new inventions which benefit the future of society. With rapid globalization people are connected with each other more than ever before through the development of technology which resulted as a result of strong Intellectual Property rights. Intellectual Property can be obtained by anyone around the world which enriches their lives and that of the modern society as whole. Accordingly Intellectual Property rights are important because of the reasons explained.

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https://www.iprcommission.org/papers/pdf/final_report/CIPRfullfinal.pdf

¹¹ Article 01, Directive 2004/48/EC of the European Parliament and Council.

