

# CRITICAL ANALYSIS OF INTELLECTUAL PROPERTY RIGHTS

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## ABSTRACT

Intellectual property is an idea, a design and invention of manuscript etc. which can ultimately give rise to useful product and application. The right of an inventor to derive economic benefits from his intellectual property is called as Intellectual property rights. They are intangible assets which helps in protecting the ownership and originality of the individual's creation. There are intellectual property shields like patent, trademark, copyright, and trade secrets. There is a range of country specific guides to help one protect and manage their intellectual property which was produced by the UK intellectual property office (IPO). The issues that might be faced with IP infringement, how to deal with it and where to find sources for further help are described in it. A list of all national IP offices and a range of services for business looking to protect their IP internationally is provided by the World Intellectual Property Organization (WIPO). Intellectual property rights are territorial. This means that a specific country registered rights do not give one protection in other countries. If someone is thinking about trading abroad then they should have registration of IP rights abroad. There are so many international laws that has been created with many rules, regulations and recommendations to protect the intellectual property yet it remains an important problem and a future challenge for both developed and developing countries. International intellectual property has become an

important and frequently declared areas. It is a patch work area of intersecting multilateral and bilateral agreements. This paper aims to elaborate the concept of intellectual property rights and to comparatively analyze the intellectual property laws between UK, USA, China, India and South Korea.

**Keywords:** intellectual property, agreement, patent, copyright, trademark, intellectual property rights

## INTRODUCTION

When we talk about Intellectual property, we need to understand the philosophy behind Intellectual property and then we can dive into how intellectual property has majorly affected the fast-growing economies and given financial incentive and thereby assuming a vital role in the technological,

Scientific and medical innovations that we are witnessing in today's world.

The third philosophy is of Jeremy Bentham, who justified intellectual property as a utilitarian theory, which means for society to be a better society we need to have intellectual property. This theory doesn't give more importance to the creators of work rather it gives more importance to the society in general. It encourages the creators to make the society better by giving them right over their piece of work so that they would keep on being innovative creators of the society.

Overtime, intellectual property has grown and manifested itself into many domains and has played a vital role in securing innovations, creation and inventions of minds. It basically protects the intangible assets of the world. And it has been secured at the multilateral level also. The successful conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the World Trade Organization enhanced the enforcement of IPR laws in the international level as well.

Majorly Copyrights, Patents, Trademarks, Designs has been given recognition among all the dimensions of intellectual property rights. It has been safeguarded in both the national and international levels by various instruments and institutions.

### ***Patents***

Patent laws deal with inventions. It has taken a shift from protecting tangible inventions, that is, which can be touched to including intangible assets like algorithms. It has been secured worldwide by international treaties to national laws.

### ***Trademarks***

Trademarks protects the ownership of marks by giving exclusive rights to use however a person wishes to and the protection period can be renewed anytime with some additional fees. It also gives the right to a person to give the use of the mark he owns on payment basis.

### ***Copyrights***

Copyright protects the creations of work. These works include: arts, music, dramas and producers of cinematographic films and sound recordings. It should be clear here that it doesn't protect the ideas but the expression of ideas. This right ensures that people's creativity doesn't get stolen from them and only the creators get the rewards for their work. It encourages them and gives them a sense of safety regarding their work and to bring it into the world by publishing the same. It not only gives encouragement to such creative people but also it ensures continuity in the field of creativity.

### ***Designs***

Industrial designs are the additional features that make products more attractive to consumers. The market is filled with various products also some having the same features or applicability. In such situations industrial designs play a vital role, they make the consumers buy those products. These creative ideas encourage and ensure to an extent the marketability of the products. Therefore, it is imperative to protect the original industrial designs. Such industrial designs ensure returns on the investments made.

Hence, we can say that intellectual property is going to become more and more relevant in the world as it progresses and our lives become more and more digital.

Further, we shall discuss the various intellectual property right trends in various other countries.

## **INTELLECTUAL PROPERTY RIGHTS IN THE UNITED KINGDOM**

Intellectual property rights, were not originally part of the foundational treaties of the European Union. In the 1960's and the 70's, however, it became clear that the input from the European Court of Justice was necessary to establish European Union- wide standards on patent and copyright laws, from copyright protection to biotechnology, Intellectual property are facing uncertainty.

The United Kingdom is the European Union's largest creator of Art, music, literature, film, television and other creative works. While these works have been protected, under copyright laws for centuries, there is still an uncertainty that's there.

## **INTELLECTUAL PROPERTY RIGHTS IN THE UNITED STATES OF AMERICA**

Intellectual property is a driving force behind the U.S economy. USA wanted to protect innovation, creativity and development of their economy to promote the interests of the consumers in the industry which led to the development of intellectual property laws in the United States. These rights are given by the Constitution of the USA. Article 1 Section 8 Clause 8 gives the power to the congress to do all such acts, that are necessary for promoting science and useful arts by giving exclusive rights to the creators of the works and inventors, in respect of their creation for a limited period after which the work falls into the public domain wherein everyone can have access to it.

For Patents, USA granted patent to the inventor for a period of 14 years.

## **INTELLECTUAL PROPERTY RIGHTS IN SOUTH KOREA**

South Korea protects the intellectual property rights for integrated circuit layouts, copyrights, geographical indications and utility models. As soon as a creative material is invented, automatically the copyright arises. The Korean intellectual property office protects the integrated circuit layouts. The Trademark Act protects the geographical indications and even

the utility models are protected by the Korean intellectual property office situated in South Korea.

## **INTELLECTUAL PROPERTY RIGHTS IN CHINA**

China has been a nation of innovation since its inception over 5,000 years ago. With ever increasing domestic innovations and partnerships with companies abroad, it is no doubt in China's best interests to maintain a strong framework for the protection of intellectual property rights. China has set a comprehensive foundation for this framework and are looking to improve in the coming years.

## **INTELLECTUAL PROPERTY RIGHTS IN INDIA**

Creativity and innovation are the energy source that fuels the growth and development of any knowledge economy. The 21<sup>st</sup> century, particularly belongs to the knowledge era and is driven by knowledge economy. With rapid globalization and liberalization of trade, there has been an emergence of "intellectual capital" as a key wealth generator resulting in intellectual property rights becoming an irreplaceable element. The intellectual property in India is protected by law.

We will discuss elaborately about the intellectual property rights in the above-mentioned countries further in this paper.

## **ANALYSES ON UK AND USA**

Many legal systems have long recognised the existence of intellectual property rights. For instance, patents were granted in Venice as early as the sixteenth century to protect inventions.

Our capacity to create innovative ideas and inventions is essential to human progress and wellbeing. New inventions must be developed and put into use in order for technology to advance, and a vibrant culture is constantly looking for fresh ways to express itself.

## TYPICAL INTELLECTUAL PROPERTY RIGHTS

**Copyright** The term "copyright" refers to the permission granted to authors and artists. For works like books, songs, web content, paintings, etc., copyright is typically given. Simply said, copyright only protects the way an idea has been conveyed; it does not safeguard the author's original idea. Generally speaking, copyrights provide the owner of the protected work control over the work's reproduction, performance, new versions or modifications, public performance, and distribution.

One of the most popular forms of intellectual property is the patent. They are employed to safeguard original, advantageous, and obscure creative concepts or methods. Even recently created plant species, or strains, which are covered by patents. With a patent, the inventor has the right to determine whether and how others may use their invention. In exchange for this benefit, the patent holder publishes a patent document that makes technical information about the invention available to the public.

### ***Trademarks***

A trademark is a symbol that makes it easier to tell one company's goods and services from another's. It includes words, phrases, logos, signs, and more.

### ***Model Rights***

Drawings, computer models, and other types of designs are protected under design rights.

### ***Commerce Secret***

Trade secrets are highly confidential knowledge that is only known to the organisations that use it, such as production processes, systems, tools, formulas, and other information. Trade secrets provide the company a competitive edge. They give the businesses that use them a competitive advantage.

### **Rights to Intellectual Property in the UK**

Depending on the author's invention, the UK offers two different levels of protection for intellectual property rights. The following are the two categories of protection:



### ***Automatic Defense***

In this case, the right to create the product itself is given automatically; no application is necessary. It provides copyright protection, which covers works of art, literature, music, sound recordings, movies, television, websites, databases, and photographs, as well as design rights, which cover how objects are shaped.

### ***Application for Protection***

In this case, the person must seek for protection; it is not given automatically.

### ***UK Law on Intellectual Property***

Different laws and provisions apply to various intellectual property rights in the UK. These are listed below:

#### ***Patents***

The Patent Act of 1977 governs the laws and rules pertaining to patents in the UK. Additionally, the European Patent Convention is included (1973). According to the Act, an invention must be unique, contain an innovative step, and be suitable for industrial application before a patent can be granted.

Any of the aforementioned conditions must be satisfied in order for the patent application to be approved. In addition, the patent will not be granted if the invention's commercial usage is immoral or contrary to public opinion. Before a patent is granted, a patent application may also be withdrawn at any time. Without first obtaining a patent, the invention's concept shouldn't be made available to the general public because patents safeguard unreleased inventions. Under UK law, even a patent application for the identical idea in any other nation would be considered a publication. The non-disclosure agreement is the only situation in which a patent can be divulged.

A patent's territorial protection means that it can only be used in the territory in which it was issued, hence a patent cannot be used to get protection in any other region. A patent is given for a period of 20 years, after which it may be renewed. Both the UK Intellectual Property Office and the World Intellectual Property Office accept applications for patents through their respective websites.

## **Trademarks**

A registered trademark may be acquired in the UK in one of the following two ways:

1. an application for a national trademark in the United Kingdom;
2. The filing of an international trademark application naming the UK or the EU Trademark.

A trademark grants a specific area with protection. In the UK, there are two sorts of trademarks:

1. Registered Trademarks: Registering your trademark in the UK is strongly advised because it will make your right more clear.
2. Unregistered Trademarks: The long-term use of a brand, which develops its reputation or goodwill, results in the creation of an unregistered right. When this happens, the claimant might invoke the right against passing off to prevent unauthorised use of unregistered trademarks, names, logos, or get-ups in order to capitalise on their goodwill. In the UK, a trademark is typically registered for ten years before it can be renewed.

## **RIGHTS TO INTELLECTUAL PROPERTY IN THE US**

The U.S. Patent and Trademark Office and the U.S. Copyright Office exist in the USA and are responsible for protecting intellectual property rights there. Patents are granted by the U.S. Patent and Trademark Office, which also registers trademarks. On the other hand, copyrights are registered by the U.S. Copyright Office at the Library of Congress. A federally registered U.S. trademark or copyright may also be recorded through the digital registration process with US Customs and Border Protection. The recording might be used to identify illegal goods entering more than 300 U.S. ports.

The International Academy for Intellectual Property (GIPA): On September 21, 2005, the US Department of Commerce announced further initiatives to prevent intellectual property theft. The main actions conducted in accordance with the strategy were the hiring of IPR experts from foreign nations, the launch of a new small business outreach programme to inform American small business owners about protecting their IP rights, and the Global Intellectual Property Academy (GIPA). The Office of Policy and International Affairs is in charge of the



GIPA, which is located at the U.S. Patent and Trademark Office in Alexandria, Virginia (OPIA).

## **THE VARIABLES COMPARING THE UK's AND THE USA's IP REGIMES COPYRIGHT**

The copyright regulations in the US and the UK appear to have some overlap. The concept of "originality" is upheld in both countries, which offer copyright protection to "original literary, dramatic, musical, or aesthetic works." The phrase was used in the UK's Copyright, Designs and Patent Act (CDPA Act) of 1988, while the US's Copyright Act of 1976 also contains comparable language. In order to receive protection in the UK, copyright registration is not required; however, in the USA, copyright registration is required. The Beijing Treaty of 2012, which deals with international trade, has the US and the UK with the performers' intellectual property rights in the audiovisual performances.

### ***Patent***

The Patent Cooperation Treaty (1970) grants the United States and the United Kingdom the ability to concurrently protect an innovation in each of the participating parties by filing a "international" patent application.

### ***Trademark***

The Lanham (Trade Mark) Act of 1946 governs trademark rules in the USA, whilst the Trademark Act of 1994 does so in the UK. The Singapore Treaty has been ratified by both the USA and the UK (2006). A dynamic and contemporary global framework for coordinating administrative trademark registration operations is what the convention seeks to establish.

Unlike the US, the UK is a party to the Madrid Agreement (1891). By acquiring an international registration that is valid in each contracting party, the treaty assists in protecting a mark across a number of nations.

## ANALYSES ON INDIA AND CHINA

In many countries there are similar degree of property rights protection and intellectual property rights and different country interpret the law in different ways. IPR in India and China are quite similar to each other.

### *History to IPR:*

In India during 1485 the first system of protection of intellectual property came in the form of venetian Ordinance historically. In the year 1856 Indian patent act was introduced which remain in force for around 50 years. In the year 1970, after independence a complete bill on patent rights was enacted which was called the patent act 1970. IPR has been protected and acknowledged in China since the 1980s.

### *Comparative analysis:*

India has been the member of World Trade Organization (WTO) And is a signatory to the following international IP agreements:

- The Paris convention
- The Berne convention
- The patent cooperation treaty
- The Madrid Protocol

China is also a member of WTO since 2001 and is a signatory to the following international IP agreement:

- The Paris convention
- The Berne convention
- The Patent cooperative Treaty
- The Madrid Convention

Both India and China are not a signatory to The Hague agreement.

TRIPS Has become the game changer to both India and China.

India has become the signatory to the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). China was also accepted as a signatory to TRIPS.

India's legal framework caters to the following areas of intellectual property:

- Trademarks
- Patent
- Copyrights
- Industrial designs
- Geographical indications
- Layout designs of integrated circuit
- Varieties of plant
- Information technology and cyber crimes
- Data protection

Whereas intellectual property rights in China covers

- Trademarks
- Patents
- Copyrights
- Trade secrets
- Geographical indications
- Plant breeders' rights

Patent comparison between India and China:

There are 3 types of patents in India, Ordinary patent Application, conventional patent application, PCT national phase patent application. There are 3 types of patents in China., the invention patent, the utility model patent and the industrial design patent.

In India, the official patent cost for filing a patent application r ₹600 for an individual or ₹4000 for a small or ₹8000 large entity. And in China it is around ₹4500-₹5000.

In Both India and China, an attorney can draft of patent.

In both India and China patent is valid for generally 20 years from the filing date of application.

By this we can get to know that Indian and Chinese law of IPR is similar to each other.

### ***Trademark comparison between India and China:***

A trademark is a sign that serves the specific and primary purpose of identifying the goods or services of a producer, allowing the customer to distinguish goods or services of one producer from those of another.

The rules for registering a trademark are governed by the laws of the country in which the application is made, and these rules differ from country to country. A trademark registered in China cannot be considered valid in India and vice versa but it can only be effective when it is registered in the international system.

Indian trademark law protects trademarks as per the trademark act, 1999. The law of trademark in India before 1940 was based on the common law principles and equity which has been followed in England before the enactment of the first registration act, 1875. The first law relating to trademark in India was the trademarks act, 1940 which has similar provision to the UK trademark act, 1938. Trademark is defined under Section 2(zb) Of the trademarks act 1999 as “Trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include, shape of goods, their packing and combination of colours.”

That Trade mark law in China is administered by the China national intellectual property administration CNIPA. Principles of legislation forming the trademark system in China are the trademark law and the unfair competition law. The first known trademarks in China were found nearly 3000 years ago, during the reign of the Zhou Dynasty.

Any person claiming to be the owner of the trademark or supposed to use a trademark by him in future can apply to the appropriate authority for its registration. Both India and China have different procedure for the registration of trademark. In India the central government, in the official gadget appoint a person to be known as the controller, general of patents, designs and trademark who shall be the registrar of the trademark. Registration of a trademark in India shall be of 10 years and renewal of the registered trademark is also for a period of 10 years from the date of expiration of the original registration or of the last renewal of registration.

China only acknowledges trademarks registration within its jurisdiction. China follows the principal “first come first serve” While giving a trademark. The validity for trademark issued is for 10 years with another period of 10 years renewal. The system of trademark law in China

is admitted by the China national intellectual property administration. Trademarks are registered by the Trademark Office, CTMO. Any company applying for the trademark can apply through CTMO or WIPO (World intellectual property organization).

### ***Copyright comparison between India and China:***

The purpose of copyright law is to grant the authors of literary, Artistic and scientific works rights that protect their interest and thus promote Progress in culture and science. The principal legislation in China is the *copyright law of People's Republic of China*, which came into force in 1990, and the *implementing rules for the copyright law of the People's Republic of China*, which was adopted in 1991. China is a signatory of a major International Convention which governs intellectual property protection. It accepted to the Berne convention, The universal copyright convention and TRIPS.

Copyright in India covers the rights granted to the creators of literary, drama, music and artistic work and the producers of cinematograph films and sound recordings. The current legislation governing copyrights in India is a Copyright Act, 1957 which was amended recently in 2012. Copyright law in India first came under British Empire, which was followed by the modified version of United Kingdom Copyright Act. India is also the member of Berne convention, the Universal copyright Convention, The Rome convention, and the agreement on Trade Related Aspects of TRIPS.

From the above comparative analysis between India and China it can be seen that, both the countries have similar process and procedure under intellectual property right.

## **INDIA AND REPUBLIC OF KOREA**

Intellectual property right is defined and recognized the brand, invention and design or other kind of the creation which a person legally recognized his business in the market level and give special recognition of their new invention.

South Korea is officially the Republic of Korea

If you plan to do a business in the South Korea market there must to be know about the intellectual property rights so that it will give u recognition in that country. South Korea

Intellectual property rights are little different from the country India with the patent, copyrights, trademark, design and so on...

India has been the member of World Trade Organization (WTO) And is a signatory to the following international IP agreements:

- The Paris convention
- The Berne convention
- The patent cooperation treaty
- The Madrid Protocol

Republic of Korea has been a member of World Trade Organization (WTO) since 1995 and is a signatory to the following international IP agreements:

- The Paris Convention
- The Berne Convention
- The patent cooperation treaty
- The Madrid Protocol

Both India and Republic of Korea is not a signatory to the Hague Agreement, which govern the international registration of industrial design and also protect the design in various countries through a single filling.

India's Legal framework caters to the following areas of intellectual property:

- Trademarks
- Patent
- Copyrights
- Industrial
- Geographical indication
- Layout designs of integrated circuit
- Varieties of Plant
- Information technology and cyber crimes
- Data protection

Whereas intellectual property rights in Republic of Korea:

- Copyright



- Patents,
- Designs
- Trademarks

In the Republic of Korea Intellectual property can be either registered or unregistered.

### ***Copyrights***

Republic of Korea copyright legislation is based on the copyright Act of 1957, known as the Korean Copyright Act, and also a signatory to the Berne Convention on Copyright.

In the South Korea copyright is an unregistered intellectual property right, which means it does not need to register copyright, but for in case of a dispute is a good reason.

As the South Korea is a highly internet-savvy country, specific concerns over copyright include online piracy.

### ***Patent, Utility Models and Industrial Designs***

Republic of Korea patent regulation are contained in the patent Act and the Utility Model Act. In the South Korea distinguishes between patents and utility models called ‘invention patents’ and ‘minor patents’.

Utility model can be granted for any device defined as ‘the creation of technical ideas using the rules of nature’. An invention patent can be granted for devices and other invention which are more highly advanced than this’. Patent give protection for a maximum of 20 years, and utility models are valid for ten.

In Republic of the Korea the patent law serves on the basis of ‘first to file’ principle, its means if two people apply for the same identical invention then the first one will get the patent right.

Industrial designs are covered by the design Act. The law confers protection for a maximum of 15 years.

### ***Trade Mark***

Republic of Korea trademark is regulated under the Trademark Act. Like India trademark is similar provision to the UK trademark Act in same way Republic of Korea trademark act is

similar to the UK trademark it ‘protecting designs, symbol, colors, shape of goods or other method to identify a businesses’ product or services.

### ***Unfair Competition***

In Republic of Korea the unfair Competition Prevention and Trade Secrets protection Act provides protection for rights owners in addition to the Acts covering each form of IP.

### ***Register and enforcing intellectual property rights in the Republic of Korea***

In Republic of Korea for enjoying the intellectual property rights, people should register them. For patents it must be registered made in the Republic of Korea but for rights other than industrial designs individual can apply under the terms of the Patent Cooperation Treaty. For trademarks, either individual can register within South Korea or use the Madrid protocol. For copyrights, the registration is not required but registering copyright is advisable under copyright authority in South Korea.

## **CONCLUSION**

New items are invented every day., intellectual property rights have taken the top spot as the most significant issue facing humanity today. Ip law differ from one country to another country. But it provides protection to their new invention, ideas, design etc. both developed and developing countries find treaties and agree related to intellectual property rights which protect their interest inside as well as outside the country. Every law has its own merits and demerits, do intellectual property law have its own. It is a priority of each n every nation, additionally it has been established different process which deals with intellectual property theft.