

The Globalisation Of Intellectual Property Rights: Enforcement Challenges

Iqra kiran¹, Mian tariq javed²

¹Lecturer, University of Lahore (Faculty of law) Iqra.kiran@law.uol.edu.pk

²Assistant professor, University of Lahore (Faculty of law) tariq.javed@law.uol.edu.pk

Abstract

This study will analyze how intellectual property came in existence and rise in the world being the strongest part of the world's economy due to globalization. This study will further analyze the harmonization of laws pertaining to enforcement of Intellectual Property rights. This study analyses and illustrates ways in which three major types of intellectual property rights – patents, copyright and trademarks operate in the sector of industry and the challenges of enforcement of the said rights in the world and developing countries in particular. The current study evaluates this relationship via a unique approach, adopting both a legal and economic analysis. The study starts with a basic concept of intellectual property rights and his historical background has been examined. Thereafter which goes on to examine the globalization of Intellectual Property right and the role of international conventions and treaties in the globalization of Intellectual Property rights. It identifies the unique attributes and problems of the enforcement and demonstrates how contemporary local IP laws can be used to tackle the challenges of enforcement. It is the view of this study that IP laws theoretically can be used to encounter the enforcement challenges and to encourage the creation of more intellectual properties for the greater good of world.

INTRODUCTION

Intellectual Property being the creation of mind has the same status as that of other properties i.e. movable and immovable and thus have the same rights as those of other properties i.e. right to sell, right to dispose of, right to reproduce etc. This right give incentive to the creators for their creation and encourage to create more for the good of public at large. This right arising out of intellectual property are well recognized in Article 27 of the Universal Declaration of Human Rights wherein the right to reap the fruits out of creative endeavors resulted from authorship of scientific, literary or artistic productions have been acknowledged.

The Paris Convention for the Protection of Industrial Property (1883) was the first international instrument which recognized the value of Intellectual Properties and followed by Bern Convention for the Protection of Literary and Artistic Works (1886) which are regulated under the umbrella of World Intellectual Property Organization (WIPO).

The legal rights attached with the Intellectual Property arisen from the mental Labour (intellectual creation) in the industrial, scientific, literary and artistic fields.

There are two main reasons for giving protection to the intellectual property rights, one is to given incentive to the creator by protecting his moral and economic rights in their creations and in the same breadth providing access to public to said creations for their mutual benefit. The second reason was to encourage the dissemination and utilization of the creation/innovation/invention and to promote fair competition leading to economic and social development.

In pitch and substance, the purpose of the laws governing the Intellectual Property is to protect the inventors and other creators of intellectual properties by granting them rights to regulate the use of their creations according to their own will.

The said rights are not applicable to the tangible product but only applicable to the intangible creations of mind. There are conventionally two branches of intellectual property, “industrial property” and “copyright.”

History of Intellectual Property Rights.

The history of Intellectual Property is traced back from feudal Europe when the guilds “the association of artisans” were given exclusive right by the Government to exploit the conduct of different industries. The said Associations had powerful control over the importation, marketing and production of creations such as inventions, devices and procedures and also the manners under which the same could be presented in the field of commerce. Since the unguided power to regulate the industry of creation was given to the said guilds which was exercised in arbitrary manner which resulted into stifling the creation instead of encouraging the creator to create more.

It was the time when the Intellectual Property law was made being impressed through political and religious belief. For example, the 1556 establishment of the Stationers’ Company’s domination in England was mainly planned to restrain the power of the Protestant Reformation movement. The Government and the Church could stop the propagation of ideas by giving the entire printing industry in the governance of this company.

The basics of intellectual property was settled in response to the use of monopoly power to encourage innovation. The monopoly power is generally criticized being harmful to the operation of the ‘powerful hand’, nevertheless justify the provision of limited monopolies to encourage invention. Jeremy Bentham justified the monopoly rights on the ground that the innovation requires large investment which includes for the purpose of research and development; thus, they are entitled to reap the fruits of their creation which involved huge investment as well.

The past of intellectual property is multifaceted and captivating. It was the Sybris, Greek State way back in 500 BCE

made the regulations which facilitated the citizens to obtain the patent for a period of one year for new manufacturing. Patent, trademark and copyright laws have become more complex in the subsequent eras but the basics remained the same. Countries launched intellectual property laws to encourage inventiveness and to enabled the inventor to reap the fruits of their creations.

The references of copyrights, patents and other allied rights arising out intellectual property law are very thin in the history. It remained unimportant subject of law until feudal Europe introduced major and famous legislation. The First British law, Statute of Monopolies was introduced in 1623 when all the important industries were controlled by the association of artisans/guilds. The said guilds were equipped with enormous power due to backing of Government to command the importation of products of their own choice and the production and selling of the said products is also controlled by said guilds. Besides, the said associations were responsible for taking all new inventions to the market, basically giving them proprietorship and control over creations even if the guilds had no concern whatsoever with their innovations.

The Globalization of Intellectual Property Rights

Intellectual Property Rights have become pervasive in the contemporary discussion and have arisen as the crucial subject of worldwide invention policy. The first serious effort to launch a global harmonization of Intellectual Property Protection was made through 'Trade Related Aspects of Intellectual Property Rights' (TRIPS) Agreement which was signed in 1994 as a founding stone of the World Trade Organization¹. We contend that followers of IPRs in western corporations and governments as well as critics in global movements and developing countries have overvalued their standing in the process of generation and dissemination of knowledge and innovation².

The less developed countries should put special policies to foster their absorptive

capacity by developing suitable set-up and human resources. Capability building is not hindered by IPRs³. Less developed countries should quintessence on learning path to gain the knowledge of the developed countries having most of the industry in their country fully equipped with the creative minds which resulted into intellectual creations and innovations.

Intellectual Property Rights have arisen as the significant issue of international invention policy: through the 'Trade Related Aspects of Intellectual Property Rights' (TRIPS) Agreement which is an effort to impose globally the western laws of Intellectual Property rights⁴.

It is claim of the strong companies and the some of the western countries that strong Intellectual Property Rights are required to continue the venture in innovation. The said stand/contention is contrary to the stance taken by the new political and social movements, which emphasize that the strong intellectual property rights application hinders economic progress and welfare in less developed countries⁵. The study analysis both stand points to consider whether the strong Intellectual Property rights encourages the economic growth or hinders its way which result into possible obstruction of innovations. The Intellectual Property Rights intrinsically do not allow corporations to get the suitable incentive from their inventions unless they developed extensive planning that includes constant knowledge and energetic invention⁶.

The role of Intellectual Property Rights is considerably different in the cross-industry: as the while patents are relatively important in pharmaceuticals and copyright is significant in the cinematic industry. It is matter of fact that the majority of areas are not really pretentious by powerful or weak Intellectual Property Rights mechanism. The countries can only save the future of their next generations by concentrating on encouraging new knowledge and creativity rather than by impeding new competitors from retrieving the knowledge they have already created⁷.

How Intellectual Property rights became

an International issue

The Intellectual Property Rights begin in the form of modern patent system in year 1474 in the Venice. Bainbridge even indicated a copyright case in the 576, and the University of Paris indorsed replication of transcripts for use within the university in 1223⁸. The date of creation of Intellectual property rights depends on the understanding of an author as he is concentrating on trademark or patent law. Nonetheless, the logical debate about intellectual property is much older. Aristotle abruptly appraised Hippodamus of Miletus for his knowledge of a reward for the originator of valuable things.⁹ Aristotle contends that this may diminish social welfare and in case of revelation of information to the state and public officials could if the information is revealed to the state, public officials could claim the discovery for them. On the opposite Hippodamus claims that an incentive reassures the creator to do the innovation and in particular create the things for the good of public at large which leads to the significant contributions for society. It is also matter of record, that the Intellectual Property rights have not been given due weightage for a long period of time. From the Prehistoric World to the Middle Ages, only limited creations have been made by the intellectuals due to non-recognition of these rights. A monk in his lifetime written 15 books in the Middle Ages.

The innovation of Gutenberg which was movable typing machine in 1455 has changed the world rather transformed the world. As early as in the year 1500, 20 million copies of 27.000 works were published. Therefore, it was required that the intellectual creations should be protected as soon as possible in order to encourage more inventions. The first right in this sector was a printing privilege for the publisher Johann von Speyer in Venice¹⁰. It was the exclusive right to publish which excludes all others from interfering into the said right. It was necessary to give Publishers this printing privilege otherwise, no one could do printing and it could have been considered as illegal as such. The printing privilege for publishers was an actual tool

to expurgate the press. The first intellectual property rights were used to politically regulate the printing production rather than protect economic incentives¹¹.

The British Industrial uprising boosted the necessity of enforcement of intellectual property rights. The British Industrial uprising started in the 18th century. At the start, the technology transfer was accomplished through expatriate workers, who personified the knowledge. The British Government was the first who made the laws to stop the transfer of intellectual knowledge through said emigrant workers by the threat of punishment. The British at the time when the technology has been connected with the machines stopped the export of machine so that the disseminations of intellectual knowledge could be stopped¹². The Britain and other advanced countries took all the possible steps to stop the transfer of technology-based knowledge whereas the less developed countries had made efforts to get the said knowledge through all means.¹³

The transfer of technology in the matter of Intellectual Property rights especially inventions of patent has become the major issue by the end of nineteenth century. At the end, the British Government withdrew the ban on the migration of worker and the export of electronic devices, machines because the laws controlling the said ban was not effective at all. The developed countries enforced the law regulating the patent in the eighteenth century whereas the trademarks laws were enforced in the second half of the nineteenth century. However, the said laws were not sufficient to cater the infringement issues and the said laws were also not providing the adequate protection to the foreign citizens.¹⁴

The number of countries had given permission to their nationals to get the patent over the inventions imported by them from the foreign countries and that leads to the developing the mechanism for enforcement of intellectual property rights at international level. In this regard, the first meeting of representatives of many countries was taking

place in year 1880 at Paris. The said meeting was ratified by eleven countries in 1883 which resulted into Paris Convention for the protection of Industrial Property.

The results of the convention were ratified 1883 by eleven countries "(...) in the form of the Paris Convention of the International Union for the Protection of Industrial Property. The countries namely Belgium, Portugal, Spain, France, Guatemala, Switzerland, Italy, the Netherlands, San Salvador, Serbia were the original signatories). The copyright issue was taken up in Bern (Germany) in 1886, and the famous Bern Convention was signed as a result thereof. The Paris convention was subsequently revised in 1911, 1925, 1934 and most importantly in year 1967 wherein the laws governing the industrial intellectual property rights were further strengthened. In addition to the Paris Convention, Bern Convention also played role in the globalization of laws governing the Intellectual Property Rights until the TRIPS agreement."¹⁵

The member's states of the Paris Convention and Bern Convention finally agreed to establish World Intellectual Property Organization (WIPO) in 1967 for the first time in history of intellectual property for form an own international legal personality. Since 1974 WIPO has been a special organization of the United Nations. The World Intellectual Property Organization managed all the treaties on intellectual property made before TRIPS agreement. The next vital move was the "Agreement on Trade- related Aspects of Intellectual Property Rights" which globalized the subject of Intellectual Property rights in real sense.¹⁶

"The developed countries including United States and several European countries voiced strong disappointment with what they believed to be insufficient protection of intellectual property in many less developed countries¹⁷. The said developed countries put the advancement of intellectual property rights (IPRs) at their highest priorities for the Uruguay Round of trade talks. The TRIPS agreement is actually the outcome of the

negotiations at Uruguay Round. World Intellectual Property Rights Organization and the World Trade Organization agreed on collaboration regarding the implementation of the TRIPS Agreement in its member states.

The Harmonisation of the Law

The need of harmonization of the laws was arisen from the need to ease the process of transactions and to minimize the cost between the countries. It is for the reason that the international activities increased with such a rapid pace which necessitated the globalization and that is now considered as economic phenomenon which directly or indirectly affects all the population of the world.¹⁸ Through the harmonization process, free market has been formed without territorial boundaries and as result of better communications and the development of technology.¹⁹ In the backdrop of this important development where the products containing the Intellectual Property Rights have exchanged among the countries, harmonization of the Intellectual Property Right was required to eradicate the Counterfeit and Piracy and to expand the international trade.²⁰ The harmonization of the Intellectual Property legislation has taken place over the period of last 25 years since different countries having different circumstances and interests were involved which made the whole process very complicated. It begun firstly with countries having similar economic growth and then steadily it became to include developing countries to finish with almost all the countries who really trying harmonize the laws pertaining the protection of intellectual property rights in order to be part of the globalized world.²¹

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), signed in Marrakesh on 15 April 1994, and came into effect in 1995, is part of the World Trade Organisation (WTO). This agreement is the most significant development in harmonizes IP legislation. This is because it includes 160 countries and what is more important is that it formulated the minimum international standards of protection of Intellectual

Property that should be incorporated by national laws of the signatory countries. This Agreement covers all the areas of Intellectual Property such as, trademark, copyright, patent, industrial design etc. Besides, it also provides the complete mechanism of dispute settlement in order to resolve the conflicts that could arise during the enforcement of intellectual property rights.²²

Despite the fact that the TRIPS provides minimum standards of intellectual Property, however, it also provides liberty to the countries to implement said standards. For that reason, Campell said that the TRIPS “bring harmonization but not uniformity”.²³ Therefore it can be safely concluded that still there is need to improve the mechanism of the implementation among the countries of the standards set by the TRIPS, since despite the fact that there is positive effect of TRIPS in the Intellectual Property legislations of the countries, because it has successfully harmonised the IP legislations of 160 countries.²⁴

The internal dispute settlement mechanism has been put in operation many times since the introduction of the same in the TRIPS Agreement with US as the dominant complaint country. The TRIPS linked the two areas which are Intellectual Property Rights and international trade which was essential for the harmonization of laws. It is to reiterate that the TRIPS set minimum standards of IP that has been used as basis for future agreements between countries.²⁵ For that reasons, the TRIPS has been considered as most successful agreement which not only set the minimum standard of protection but also harmonized the laws of member counties which ultimately promoted the globalization. It is therefore clear that it has promoted the international trade between the countries.²⁶

Counterfeit and Piracy

The development of the technology and the market grow have caused serious threats to the possibility of infringement of the original intellectual property and its rights and it is possible that the copy of the said original IP be utilized in every country.²⁷ The

harmonization of law as discussed above is important to bring all the countries together at one table and take the same stand against the new form of infringement which becomes now global phenomena called the counterfeit.²⁸ The phenomena of counterfeit posed serious threats to the business and to the economy of the countries as it decreased the business activities and minimize the profits of the businesses on one side whereas on the other hand it also cost in the form of damages as it increases the cost of manures required to be adopted in order to encounter the counterfeit.²⁹ In Globerman (1998) argued that any weak legislation to combat the counterfeit would affect the investment in the country which would adversely impact its economy. For the above said reasons, it is recommended that the effective measures including strong implementation of the Intellectual property laws and the policies framed under the international conventions have to be made strictly so that the interest of the investors and the inventors may be protected so that they can invest in the market of said country.³⁰

The grayest area of counterfeit at present is in the area of medicine which is now emerges the global problem as it impacts both develop and developing countries. The World Health Organization has failed so far to obtain the exact magnitude of this global problem as in the absence of said data no effective measures can be adopted to combat the counterfeit in real sense.

More than 3000 substandard medicine were detected in the recent past in almost 120 different countries in almost all kinds of medicine including antibiotics, analgesic.³¹ Furthermore, the report of the European Commission (2011), has projected that in Europe the illegal medicines have increased 600% in only one year, and it is forecasted to remain increasing in the coming years.³² The Pakistan being the most effected country from the counterfeit wherein large number of deaths caused due to counterfeit medicine which contains a toxic component. Moreover, a cancer medicine was imitated by Italian company, and distributed

in some of the EU countries which caused unidentified damages.

The phenomena of counterfeit is arguably increased due globalization as the market becomes free and without borders which makes the counterfeiting an easy option as in pre-globalization era, the counterfeiting was in the few countries, however almost all the countries are effected from the said issue of grave concern.³³ The UN Office of Drugs and Crimes has mentioned in their recent reports that the China and India among the major countries of medicine consuming becomes the major exporters of substandard medicines in the world. The countries have to resort the harmonization of law in order to counter this area of grave concern in order to combat counterfeit; however, the evidence appears to show that the counterfeit of medicines is now the worst challenge for the intellectual Property rights and its legislation as the same is connected with the life of the public at large and as result of the said challenge, the people's life is at stake and people are losing their lives globally and the international instruments of intellectual property rights are not able to counter this worst problem.³⁴

Why Strong Intellectual Property Protection Matter in a Globalized World?

International strategies for the protection of intellectual property rights have seen thoughtful variations over the past few decades. Rules on the protection of copyrights, patents, trademarks and other kinds of Intellectual Property rights are now typical element of international trade agreements.³⁵ Most importantly, in the Uruguay Round of multilateral trade negotiations, members of the World Trade Organization resolved the Agreement on Trade Related Aspects of Intellectual Property Rights which settled the minimum standards of protection which has to be respected by the countries having interest in the protection of Intellectual Property Rights at-least. The countries also entered into numerous bilateral and regional trade agreements for the enforcement of intellectual Property rights under the framework of World

Intellectual Property Organization.³⁶

The reason behind the continuous revision of the international conventions and the policies of Intellectual Property rights is of two folds. First, the development of new technologies has required constant revision of IPR tools.³⁷ The integrated circuits, biotechnology inventions and computer software are the forms of technology which emerges as an international used technology therefore the international instruments protecting the technology needs to revise keeping in view the above-mentioned technologies. The start of the Internet has postured different encounters to the printing, publishing and performing trades, because the said contents can be adapted in digital form at very low cost.³⁸ Second, the progression of economic globalization has allowed intellectual property to cross the boundaries of the countries without difficulty. Certainly, for the richer countries, the goods and services arising out of intellectual property rights are the reason of the strength of their economy.³⁹ It is thus not astonishing to see the protection of intellectual property rights as the important issue while negotiating the international trade agreements in the said countries.

Inspired from the recent technological developments, scholars have required to comprehend the economic reinforcements at different level and the kind of intellectual property rights protection.⁴⁰ Precisely, the economists assessed the results of strong level of protection of Intellectual Property rights through different indicators which includes economic and social performance extending from invention, competition, and market edifice to investment, trade and accrediting results. Such study can be valuable to legislators for making decision pertaining to level of intellectual property rights standards of protection and the frame the intellectual property rights regulation by using the tools which decrease the cost of protection and at the same time beneficial for the country economy.⁴¹

In this era, the economy of the nations is based on the skill of developing the scientific

and technological innovations which the said nations exploit to boost their economy and to meet the competition among the countries were the benefit of their economy. Intellectual property rights i.e. trademarks, patents and copyrights, are the significant resources used by the companies to help protect their investments in modernization.⁴² They are legal instruments such as domestic legislations and international conventions which the countries used to enforce the Intellectual Property rights in order to boost industrial development and economic growth.

The intellectual property rights give the inventor exclusive right to reap the fruits of its creation for limited period of time.⁴³ This protection prevents the use of other persons creation without his permission which resulted into encouragement to the inventor to do more creations. The imposition of limitation may arguably slow the pace of the innovation however the same is necessary to strike balance between two rights. However, one school of thought argues that the limitation may retard the growth in the technology by stopping other firms from developing new inventions or improvements thereof. If the new technology increase the efficiency which injected in the economic activity, these too may be retarded by the protection of the original innovation.

Thus, intellectual property rights have inbuilt policy issue between the provision of encouragement to technological innovation and the objective of reassuring the swift dissemination of new technology and the growth of technological knowledge.⁴⁴ These rival aims also represent influential, challenging economic benefit from research and development rigorous and non research and development rigorous firms at one level, to the commercial, industrialized, and less developed nations at another.

Governments have established their own domestic system of Intellectual Property laws based on their general understanding though obliquely in the transactions involved in Intellectual property laws in an attempt to strike a balance between the different rights

for the benefit its national economic, political, and social background.⁴⁵ It is important to note in this regard that IPRs laws are territorial in nature (i.e., the protection granted to an innovation is administered by the laws of the country in which the innovation is made, used, or sold). Therefore as a matter of example, in case if any person obtained a patent from the U.S. Patent and Trademark Office which gives protection only within the territory boundaries of the United States.⁴⁶ If a person is also involved in the same business in another country, it must get the protection there by filling for and obtaining IPR protection in said country. It is also matter of fact that many countries do not offer as strong Intellectual Property protection as available in the United States. Despite the fact that international convention regarding the protection of Intellectual Property rights are in existence but such conventions are general in nature and do not provide any special right at all. The said international agreement though ensures foreign creator to be treated and given the same rights as those granted to their own citizens.⁴⁷

The intellectual property rights protection is not regarded as comprehensive and therefore many criticized that the protections granted to the inventors is already for limited period of time and that is not complete which discourages the inventor to do more innovations. Furthermore, there has always been a propensity for some countries to pursue to use intellectual Property rights to favor national businesses over foreign ones. The major international Intellectual Property agreements are meant to regulate this attitude in the interest of encouraging international trade.⁴⁸ The recent developments in the global world of science, technology and trade, have stressed even further the efficiency of Intellectual Property Rights in protecting Scientific & Technological innovations.⁴⁹

The aim of this study is to examine the nature of these changes, the challenges and threats post to the national and international instruments and their insinuations for science and technology. The Office of International

Affairs of the National Research Council commenced a scrutiny of the global proportions of intellectual property rights in science and technology in response to cumulative fear articulated by significant sectors of U.S. industry and to the U.S. university research community though to some extent about the lack of uniform international treatment of Intellectual property rights and the trouble of shielding their innovations from imitation.⁵⁰

The U.S. International Trade Commission report published in year 1988 assessed that the cumulative losses to U.S. industry from insufficient intellectual property protection in other countries in the year 1986 were \$23.8 billion, or 2.7 percent of total sales.⁵¹ It has not noted with great concern in the recent past, that the less developed countries have very weak protection of intellectual property rights which is causing threat to the established economies. The widely infringement of intellectual property rights in the less developed countries has resulted from a piracy and due to unfavorable policies regarding the protection of Intellectual Properties.

The some of the countries and their governments in the run of increasing and establishing their economy has adopted the short cut by ignoring the enforcement of intellectual property rights protection and turned the deaf ear towards the infringement of said rights and allowed the use of protected technologies and allowed the copied of the same or unauthorized use of the same.⁵² The government not imposing the strict compliance measures are of the view that it is important to encourage the small business so they could grow while using the technologies of other and resultantly would start innovating their own technologies.⁵³ The other countries are doing this in the war of competition and wants to run the race of world economy.

The above said approach of the different government make the issue of Intellectual property enforcement one of the political in nature and therefore has been elevated to high political levels within the Group of Seven (G-7) who have advance industries, as evident

from the fact that they have put the said concerns in the agenda of G-7 Economic Summit meeting. The intellectual Property Rights is always remained the most important matter of discussion in the Uruguay Round of trade negotiations within the General Agreement on Tariffs and Trade (GATT).⁵⁴

The risk stood by insufficient IPR protection is that economic losses agonized by transforming companies could lead to a decrease in the rate of industrial invention in the United States and other industrially advanced countries proficient of producing inventions.⁵⁵ A lesser rate of invention could, in turn, result in slow progress in the world economic which would upset all the nations.⁵⁶ Notwithstanding this disagreement, though the developing countries may be benefited from more vigorous development of world economic have been unwilling to admit the evidence that it is in their national interest to give more stronger protection to the Intellectual Property rights.

This ostensible inconsistency replicates the complications, skirmishes, and reservations surrounding Intellectual Property Rights issues as they relate to science and technology. The dominant persistence of the discussion described here was to recognize and irradiate the international IPR issues of worry to the United States and international Scientific & Technological groups and while doing that contribute to the progression of public education and deliberation that must guide the policymaking in this field. The prime standpoint existing on these issues is that of the United States and the capacity may be adjudicated as success if it pays to the making of a United States approach to international Intellectual Property matters that will help the state interest.⁵⁷ It is palpable, though in the present world of interdependence of scientific, technological, and economic field, the United States state interest in the global Intellectual Property scheme cannot be measured in segregation from the benefits of other countries. Consequently, the capacity also comprises lookouts of other countries as well.

Enforcement of intellectual property rights

The maximum contribution of intellectual property system towards the economic and social welfare can only be made once all the necessary and effective tools are in place for the protection of intellectual property rights in a timely, effective and reachable manner while protecting the legitimate rights of the others concerned. The TRIPS Agreement introduced the mechanism to harmonize the laws by putting at place the general principles for the enforcement of IP rights. The said agreement provides balanced roadmap for effective and fair measures accessible which at the one side provides effective remedies while on the other side also ensures that there shall be no hindrances to valid trade and providing protection against misapplication of enforcement actions. Apprehensions about acceptable implementation of IP rights in the multifaceted trading system antecede the entry into force of the TRIPS Agreement upon the formation of the WTO. Earlier two conventions held at Bern and Paris provided mechanism of enforcement of Intellectual Property rights. The General Agreement on Tariffs and Trade (GATT) in 1978 as part of the Tokyo Round of trade negotiations for the first time introduced the suggestion on the counterfeit goods at the time of trade, however said suggestion could not acceded too. The Uruguay Round negotiation includes the challenge of counterfeiting goods in their agenda and the said discussion ultimately resulted into the landmark agreement called Trade Related Aspect of Intellectual Property rights.⁵⁸

It is for the first time that comprehensive legislation over the enforcement of intellectual property rights though containing the general principles in the TRIPS Agreement. The TRIPS agreement make it mandatory for the member states to incorporate the said Provisions for the enforcement of IP rights which includes laws for obtaining evidence, injunctions, damages and other remedies in their domestic law without certain period of time.

6.1 Understanding enforcement

obligations

i. Basic principles

The main aim of the TRIPS Agreement was to ensure the harmonized laws across the board which equally apply to the enforcement of IP rights. The TRIPS agreement settled the law that the national treatment shall be given to the citizens of all member states of WTO and shall not give discriminatory treatment to foreigners as compared to their own nationals. The Individual stated can legislate beyond the standards set in the TRIPS agreement provided that the principles of the standards shall remain uniform and not in consistent with the provisions of TRIPS Agreement. The said individual states are also at liberty to adopt appropriate measures for the enforcement obligations arising out of the TRIPS agreement according to their own jurisprudence. The WTO mechanism of dispute settlement is notwithstanding any contained in the enforcement provisions contained in the TRIPS agreement.⁵⁹

ii. General obligations

The TRIPS agreement imposed general obligations on the member states regarding the enforcement procedures for the protection of IP rights on the basis of transparency, due process of law and fairness. The purpose of said obligations is that the member's states should have uniform law against the infringers and in favour of right holders.

The Learned Court of the member's states should also apply the said principles including the due process of law while adjudicating the disputes pertaining to intellectual property rights.

The enforcement of intellectual property rights should be applied in fair manner so to avoid any restrain on the legal trade. The member states are under obligation to ensure that no one shall abuse the process of law and place the complete defenses. Though member's states are not under obligation to establish special courts for the adjudication of intellectual property matters, however some of the countries including Pakistan have established Intellectual Property Tribunals.

iii. Civil and administrative procedures and remedies

The TRIPS Agreement provides the fair mechanism for the holder of intellectual property right to sue the infringer in the court of law in the form of availing the civil as well as criminal remedies through fair process of law which includes evidence and imposition of damages and cost. Three remedies are provided in the TRIPS Agreement which the Courts can award: injunctions by restraining the infringer from further using the intellectual property of creator, damages arising out of injury caused to the infringement, rendition of account of the profit the infringer earned during the period of infringement alongwith other remedies, such as the removal of infringing goods from channels of commerce or their destruction provided under the relevant legislation of the member country.

The domestic legislation of some of the members states provides the administrative mechanism to deal with the disputes relating to intellectual property rights instead judicial mechanism. However, in that scenario, the TRIPS agreement cast obligation on those members states to apply the same principles of adjudication on the administrative mechanism as applicable in case of judicial proceedings that includes civil remedies.

iv. Provisional measures

The members states of World Trade Organization are obligatory to provide rapid and real provisional implementation to thwart an contravention of IP rights from stirring, in specific to foil goods from inflowing the supply channels, including infringing goods on importation immediately; and the evidence relating to infringement has to be preserved in order to use the same in the Court of law at the time of adjudication. Interim injunction has to be in place in order to immediately restrain the infringers at preliminary stage in an appropriate case and in particular where the delay could cause irreparable loss to the holder of the intellectual property right.

v. **Border measures**

The TRIPS agreement also provides the mechanism of border enforcement of intellectual property rights wherein the holder of the IP right could complain to the customs authorities to stop the importation and exportation of the infringing good at the border and could stop the further dissemination of the infringing goods. Few of the member states of World Trade Organizations apply border procedures to those goods which infringes the intellectual properties of others and are ready to export out of said member states, however the said act is optional for the member states as the importation enforcement is mandatory mechanism which has to be adopted by the member state of World Trade Organization.

Likewise, the member state of World Trade Organization are not under compulsion to apply the border enforcement mechanism to corresponding imports to goods in shipment, or to the importing of small numbers of non-commercial goods. The holder of the Intellectual Property rights holder has every right to ask the customs authorities to take action against the culprits who are infringing the intellectual property rights without any fear.

vi. **Criminal procedures**

The TRIPS Agreement also provides criminal remedies and in this regard criminal procedure and the penalties have been specified in some case which includes deliberate trademark counterfeiting and copyright piracy carried out at commercial level. However members states are not under obligation to place the criminal procedure for other kinds of intellectual property rights as the same are considered as civil wrong and due process is in place with the provisions of damages to compensate the right holder of intellectual property rights.

vii. **WTO Activities**

The World Trade Organization is directly relevant to enforcement of Intellectual Property rights as the Intellectual property is no considered as one of the main pillar of

world's big economies, therefore the World Trade Organization continuously work with the World Intellectual Property organization to closely monitor the cross border infringement issues of the Intellectual property and the effective enforcement of the rights.

The transparent procedures introduced by the TRIPS Agreement suggests a massive information data for the public and provide the platform for the exchange of ideas based on the information data kept with the WIPO. The purpose of the provisions of this platform is to encourage the fairness in the process, obviousness of laws and policies of the enforcement and protection required by the members states to incorporate in their domestic laws. It is the duty of the member states to monitor the implementation of the provisions of the TRIPS Agreement and to enable collaboration between the authorized bodies of the member states in order to eradicate the trade of infringing goods.

It is the responsibility of the members states under the TRIPS agreement to regularly monitor the implementation of enforcement measures, their update and to notify the same regularly. They are also under obligation to regularly submit the responses to the checklist sent by WIPO for the monitoring of enforcement issue. The members states are also required to nominate contact points for liaison in order to establish the comprehensive cooperation to ensure the effective enforcement plan. The member states have submitted an undertaking under Article 69 of the TRIPS Agreement to collaborate on the abolition of IP infringement in the international trade.

Once the members states submit their enforcement measures, thereafter the TRIPS Council constituted specially for said purpose reviews the implementing legislation and enforcement measures. The TRIPS Council provides the forum wherein the ad-hoc measures for the timely enforcement of IP rights can also be considered as a special agenda and in this regard, special meeting can also be called at any time.

The WTO secretariat also carries the technical assistance programs which retorting to request from WTO Members for the enforcement of IP rights. Technical assistance is provided for the capacity building of the enforcement agencies of the member states keeping in view the cross-border infringement issues of the Intellectual Property rights. The reason behind provision of technical support to the member states is to interpret and implementation of the enforcement section in the TRIPS Agreement in its letter and spirit. Due to the globalization, indeed the Intellectual Property rights is also facing diverse challenges quo the enforcement and protection of the said rights, therefore it is necessary, the Courts of the developing country in particular must experience the rapid changes in this field and should be equipped with the clear understanding of the provisions of enforcement incorporated in the TRIPS agreement.

There is another body besides TRIPS Council which is called Trade Policy Review Body which also oversees the enforcement-related issues of the member states. During the meetings, the question and answers to the enforcement problems are duly reported in the Trade Policy Reports which help the member states to update with the latest challenges to the enforcement.

There is another body formed under the TRIPS Agreement is the dispute settlement mechanism which also look after the rights and obligations of the members stated pertaining to enforcement of intellectual property rights. So far number of disputes have been settled through the said mechanism which also provided the guidance while interpreting the vital provisions of the chapter of enforcement in the TRIPS agreement.

viii. Cooperation

There are many other international organization other than World Trade Organization that commence work on the enforcement of Intellectual Property rights which includes but not limited to Hague Conference on Private International Law, the International Telecommunication Union,

Interpol, the Organization for Economic Cooperation and Development, the South Centre, the United Nations Conference on Trade and Development, the United Nations Interregional Crime and Justice Research Institute, the World Customs Organization and the World Intellectual Property Organization. The World Trade Organization coordinate and cooperate with the said multifaceted allies is essential to the WTO Secretariat in this part of TRIPS. The TRIPS Council regularly report the cooperation between these multilateral partners.

Conclusion

This study has reviewed the insinuations of the globalization for intellectual property rights particularly in the perspective of technological advancement and rapid industrialization of the world. The study further evaluated the effect of globalization on the developing countries on the backdrop intellectual property rights. The study concluded that mechanism for the continuous monitoring of enforcement of intellectual property rights has to be in place wherein after review, the required changes in the relevant legislation can be made. It is also suggested the meaningful cooperation among the member states of WIPO and signatories of TRIPS agreement is required to ensure the eradication of cross-border infringement of the intellectual property rights. The provisions of the TRIPS agreement concerning the collective interest of the public at large should provide strategies for further consultations and offer prospects for multifaceted as well as mutual measures for technology collaboration.

The World Trade Organization and World Intellectual Organization and other allied organizations needs to focus on the disseminations of stock of knowledge the developed economies have in order to address the real time problems of the developing country. This will require that the measures have to be adopted beyond the scope of intellectual property protection and require new forms of enterprises. The discussion on the TRIPS agreement suggests that new form

cooperation is required among the international community for implementation of practical plans for effective relationship between technological innovation and global capital flows. This connection is imperative as the investment capital is the most vital means for international technology transfer.

References:

1. Harmonizing Copyright's Internationalization with Domestic Constitutional Constraints. 2008. *Harvard Law Review*, 121(7):
2. Barrientos, S. 2002. 'Flexible' Female Employment and Ethical Trade in the Global Economy. In P. Newell, S. M. Rai & A. Sco (eds.) *Development and the Challenge of Globalization*. London: ITDG Publishing.
3. Barwa, S. & Rai, S.M. 2002. Political Economy of Intellectual Property Rights: Gender Perspective. In P. Newell, S. M. Rai & A. Sco (eds.) *Development and the Challenge of Globalization*. London: ITDG Publishing.
4. Bishop, J. A. 2004. Who Are the Pirates? Politics of Piracy, Poverty, and Greed in a Globalized Music Market. *Popular music and society*, 27(1).
5. Blakeney, M. 2006. A Critical Analysis of the TRIPS agreement. In M. P. Pugatch (ed.) *Intellectual Property Debate. Perspectives from Law, Economics and Political Economy*. Massachus: Edward Elgar Publishing,
6. Boldrin, M. & Levine, D. 2006. Globalization, intellectual property, and economic prosperity. *Spanish Economic Review*, 8(1):
7. Boyle, J. 2004. A Manifesto on WIPO and the Future of Intellectual Property. *Duke Law & Technology Review*, 9.
8. CIPR. 2002. *Integrating Intellectual Property Rights and Development Policy*. London: CIPR. http://www.iprcommission.org/graphic/documents/final_report.htm.
9. Collins, F. S. 2007. *Language of God: A Scientist Presents Evidence for Belief*. London: Free Press.
10. Cook, T. 2006. Patenting genes. In M. P. Pugatch (ed.) *Intellectual Property Debate. Perspectives from Law, Economics and Political Economy*. Massachus: Edward Elgar Publishing.
11. Cosbey, A. 2000. Sustainable Development Effects of the WTO TRIPS Agreement: a focus on developing countries. *International Institute for Sustainable Development*.
12. Creative Commons Corporation. 2011. *Power of Open*. <http://thepowerofopen.org>.
13. David, M. & Kirkhope, J. 2004. New Digital Technologies: Privacy/Property, Globalization, and Law. *Perspectives on Global Development & Technology*, 3(4):437-449.
14. Drahos, P. & Braithwaite, J. 2002. *Information Feudalism. Who Owns the Knowledge Economy?* London New-York: New Press.
15. Fink, C. & Braga, C. A. P. 2005. How Stronger Protection of Intellectual Property Rights Affects International Trade Flows. In C. Fink & K. E. Maskus (eds.) *Intellectual Property and Development. Lessons From Recent Economic Resear*. New York: World Bank & Oxford University Press.
16. Fink, C. & Maskus, K. E. (eds.). 2005. *Intellectual Property and Development. Lessons From Recent Economic Resear*. New

- York: World Bank & Oxford University Press.
17. Gibson, J. 2006. *Creating Selves. Intellectual Property and the Narration of Culture*. London: Ashgate.
 18. Gjerull, N. F. 2006. *Open Source Software Development in Developing Countries. e HISP Case in Ethiopia*. Master's study, University of Oslo. Department of Informatics.
 19. Goren, D. 2006. *Pharmaceutical innovation and intellectual property rights: a global public good?* In M. P. Pugatch (ed.) *Intellectual Property Debate. Perspectives from Law, Economics and Political Economy*. Massachus: Edward Elgar Publishing, p. 159–169.
 20. Grant, J., Ashworth, C. & Charmasson, H. 2008. *Patents, Registered Designs, TradeMarks & Copyright for Dummies*. Chichester: John Wiley.
 21. Haupt, A. 2008. *Stealing Empire. P2P, Intellectual Property and Hip-Hop Subversion*. Cape Town: HSRC Press.
 22. Lippoldt, D. 2006. *Can Stronger Intellectual Property Rights Boost Trade, Foreign Direct Investment and Licensing in Developing Countries?* In M. P. Pugatch (ed.) *Intellectual Property Debate. Perspectives from Law, Economics and Political Economy*. Massachus: Edward Elgar Publishing, p. 44–61.
 23. Matharoo, R. R. 1997. *Intellectual Property and Corporate Culture in India— Comparative and Legal Aspects*. In A. Sterling (ed.) *Perspectives on Intellectual Property. Intellectual Property and Market Freedom*. London: Sweet & Maxwell, vol. 2.
 24. McGuigan, G. S. & Russell, R. D. 2008. *Business of Academic Publishing: A Strategic Analysis of the Academic Journal Publishing Industry and its Impact on the Future of Scholarly Publishing*. E-JASL: *Electronic Journal of Academic and Special Librarianship*, 9(3).
 25. Papaioannou, T. 2011. *Technological Innovation, Global Justice and Politics of Development*. *Progress in Development Studies*, 11(4):
 26. Peltz, R. J. 2009. *Global Warming Trend? Creeping Indulgence of Fair Use in International Copyright Law*. *Texas Intellectual Property Law Journal*, 17(2):
 27. Poythress, V. S. 2005. *Copyrights and Copying: Why the Laws Should Be Changed*. http://www.frame-poythress.org/poythress_articles/2005Copyrights.htm.
 28. Vaidhyathan, S. 2001. *Copyrights and Copywrongs*. New York: New York University Press.
 29. Wang, S. 2003. *Recontextualizing Copyright: Piracy, Hollywood, the State, and Globalization*. *Cinema Journal*, 43(1):
 30. World Bank. 2001. *Global Economic Prospects and the Developing Countries 2002: Making Trade Work for the World's Poor*. Washington DC: World Bank.
 31. WTO. 1994. *Agreement on Trade-Related Aspects of Intellectual Property Rights*. http://www.wto.org/english/docs_e/legal_e/27-trips.pdf