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The Significant Role of Intellectual Property Law in Protecting Innovation and Creativity in Present Digital Age

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ABSTRACT: Intellectual property (IP) is a category of property that includes intangible creations of the human intellect.[1][2] There are many types of intellectual property, and some countries recognize more than others.[3][4][5][6][7] The best-known types are patents, copyrights, trademarks, and trade secrets. The modern concept of intellectual property developed in England in the 17th and 18th centuries. The term "intellectual property" began to be used in the 19th century, though it was not until the late 20th century that intellectual property became commonplace in most of the world's legal systems.[8]

Supporters of intellectual property laws often describe their main purpose as encouraging the creation of a wide variety of intellectual goods.[9] To achieve this, the law gives people and businesses property rights to certain information and intellectual goods they create, usually for a limited period of time. Supporters argue that because IP laws allow people to protect their original ideas and prevent unauthorized copying, creators derive greater individual economic benefit from the information and intellectual goods they create, and thus have more economic incentives to create them in the first place.[9] Advocates of IP believe that these economic incentives and legal protections stimulate innovation and contribute to technological progress of certain kinds.[10]

KEYWORDS: IP, copyrights, trade secrets, original ideas, economic incentives, legal protections, goods

I.INTRODUCTION

The intangible nature of intellectual property presents difficulties when compared with traditional property like land or goods. Unlike traditional property, intellectual property is "indivisible", since an unlimited number of people can in theory "consume" an intellectual good without its being depleted.[11] Additionally, investments in intellectual goods suffer from appropriation problems: Landowners can surround their land with a robust fence and hire armed guards to protect it, but producers of information or literature can usually do little to stop their first buyer from replicating it and selling it at a lower price. Balancing rights so that they are strong enough to encourage the creation of intellectual goods but not so strong that they prevent the goods' wide use is the primary focus of modern intellectual property law.[12] The Statute of Monopolies (1624) and the British Statute of Anne (1710) are seen as the origins of patent law and copyright respectively,[13] firmly establishing the concept of intellectual property.

"Literary property" was the term predominantly used in the British legal debates of the 1760s and 1770s over the extent to which authors and publishers of works also had rights deriving from the common law of property (Millar v Taylor (1769), Hinton v Donaldson (1773), Donaldson v Becket (1774)). The first known use of the term intellectual property dates to this time, when a piece published in the Monthly Review in 1769 used the phrase.[14] The first clear example of modern usage goes back as early as 1808, when it was used as a heading title in a collection of essays.[15]

The German equivalent was used with the founding of the North German Confederation whose constitution granted legislative power over the protection of intellectual property (Schutz des geistigen Eigentums) to the confederation.[16] When the administrative secretariats established by the Paris Convention (1883) and the Berne Convention (1886) merged in 1893, they located in Berne, and also adopted the term intellectual property in their new combined title, the United International Bureaux for the Protection of Intellectual Property.

The organization subsequently relocated to Geneva in 1960 and was succeeded in 1967 with the establishment of the World Intellectual Property Organization (WIPO) by treaty as an agency of the United Nations. According to legal scholar Mark Lemley, it was only at this point that the term really began to be used in the United States (which had not been a party to the Berne Convention),[8] and it did not enter popular usage there until passage of the Bayh–Dole Act in 1980.[17]

The history of patents does not begin with inventions, but rather with royal grants by Queen Elizabeth I (1558–1603) for monopoly privileges. Approximately 200 years after the end of Elizabeth's reign, however, a patent represents a

legal right obtained by an inventor providing for exclusive control over the production and sale of his mechanical or scientific invention. demonstrating the evolution of patents from royal prerogative to common-law doctrine.[18]

The term can be found used in an October 1845 Massachusetts Circuit Court ruling in the patent case Davoll et al. v. Brown, in which Justice Charles L. Woodbury wrote that "only in this way can we protect intellectual property, the labors of the mind, productions and interests are as much a man's own ... as the wheat he cultivates, or the flocks he rears."[19] The statement that "discoveries are ... property" goes back earlier. Section 1 of the French law of 1791 stated, "All new discoveries are the property of the author; to assure the inventor the property and temporary enjoyment of his discovery, there shall be delivered to him a patent for five, ten or fifteen years."[20] In Europe, French author A. Nion mentioned propriété intellectuelle in his Droits civils des auteurs, artistes et inventeurs, published in 1846.

Until recently, the purpose of intellectual property law was to give as little protection as possible in order to encourage innovation. Historically, therefore, legal protection was granted only when necessary to encourage invention, and it was limited in time and scope.[21] This is mainly as a result of knowledge being traditionally viewed as a public good, in order to allow its extensive dissemination and improvement.[22]

The concept's origin can potentially be traced back further. Jewish law includes several considerations whose effects are similar to those of modern intellectual property laws, though the notion of intellectual creations as property does not seem to exist—notably the principle of Hasagat Ge'vul (unfair encroachment) was used to justify limited-term publisher (but not author) copyright in the 16th century.[23] In 500 BCE, the government of the Greek state of Sybaris offered one year's patent "to all who should discover any new refinement in luxury".[24]

According to Jean-Frédéric Morin, "the global intellectual property regime is currently in the midst of a paradigm shift".[25] Indeed, up until the early 2000s the global IP regime used to be dominated by high standards of protection characteristic of IP laws from Europe or the United States, with a vision that uniform application of these standards over every country and to several fields with little consideration over social, cultural or environmental values or of the national level of economic development. Morin argues that "the emerging discourse of the global IP regime advocates for greater policy flexibility and greater access to knowledge, especially for developing countries." Indeed, with the Development Agenda adopted by WIPO in 2007, a set of 45 recommendations to adjust WIPO's activities to the specific needs of developing countries and aim to reduce distortions especially on issues such as patients' access to medicines, Internet users' access to information, farmers' access to seeds, programmers' access to source codes or students' access to scientific articles.[26] However, this paradigm shift has not yet manifested itself in concrete legal reforms at the international level.[27]

Similarly, it is based on these background that the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement requires members of the WTO to set minimum standards of legal protection, but its objective to have a "one-fits-all" protection law on Intellectual Property has been viewed with controversies regarding differences in the development level of countries.[28] Despite the controversy, the agreement has extensively incorporated intellectual property rights into the global trading system for the first time in 1995, and has prevailed as the most comprehensive agreement reached by the world.[29]

II.DISCUSSION

Intellectual property rights include patents, copyright, industrial design rights, trademarks, plant variety rights, trade dress, geographical indications,[30] and in some jurisdictions trade secrets. There are also more specialized or derived varieties of sui generis exclusive rights, such as circuit design rights (called mask work rights in the US), supplementary protection certificates for pharmaceutical products (after expiry of a patent protecting them), and database rights (in European law). The term "industrial property" is sometimes used to refer to a large subset of intellectual property rights including patents, trademarks, industrial designs, utility models, service marks, trade names, and geographical indications.[31] A patent is a form of right granted by the government to an inventor or their successor-in-title, giving the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the public disclosure of the invention. An invention is a solution to a specific technological problem, which may be a product or a process, and generally has to fulfill three main requirements: it has to be new, not obvious and there needs to be an industrial applicability.[32]:17 To enrich the body of knowledge and to stimulate innovation, it is an obligation for patent owners to disclose valuable information about their inventions to the public.[33] A copyright gives the creator of an original work exclusive rights to it, usually for a limited time. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or "works".[34][35] Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed.[36] An industrial design right (sometimes called "design right" or design patent) protects the visual design of objects that are not purely utilitarian. An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination

of pattern and color in three-dimensional form containing aesthetic value. An industrial design can be a two- or three-dimensional pattern used to produce a product, industrial commodity or handicraft. Generally speaking, it is what makes a product look appealing, and as such, it increases the commercial value of goods.[33] Plant breeders' rights or plant variety rights are the rights to commercially use a new variety of a plant. The variety must amongst others be novel and distinct and for registration the evaluation of propagating material of the variety is considered. A trademark is a recognizable sign, design or expression that distinguishes a particular trader's products or services from similar products or services of other traders.[37][38][39] Trade dress is a legal term of art that generally refers to characteristics of the visual and aesthetic appearance of a product or its packaging (or even the design of a building) that signify the source of the product to consumers.[40] A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors and customers. There is no formal government protection granted; each business must take measures to guard its own trade secrets (e.g., Formula of its soft drinks is a trade secret for Coca-Cola.)

III.RESULTS

The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods for consumers.[9] To achieve this, the law gives people and businesses property rights to the information and intellectual goods they create, usually for a limited period of time. Because they can then profit from them, this gives economic incentive for their creation.[9] The intangible nature of intellectual property presents difficulties when compared with traditional property like land or goods. Unlike traditional property, intellectual property is indivisible – an unlimited number of people can "consume" an intellectual good without it being depleted. Additionally, investments in intellectual goods suffer from problems of appropriation – while a landowner can surround their land with a robust fence and hire armed guards to protect it, a producer of information or an intellectual good can usually do very little to stop their first buyer from replicating it and selling it at a lower price. Balancing rights so that they are strong enough to encourage the creation of information and intellectual goods but not so strong that they prevent their wide use is the primary focus of modern intellectual property law.[12]

By exchanging limited exclusive rights for disclosure of inventions and creative works, society and the patentee/copyright owner mutually benefit, and an incentive is created for inventors and authors to create and disclose their work. Some commentators have noted that the objective of intellectual property legislators and those who support its implementation appears to be "absolute protection". "If some intellectual property is desirable because it encourages innovation, they reason, more is better. The thinking is that creators will not have sufficient incentive to invent unless they are legally entitled to capture the full social value of their inventions".[21] This absolute protection or full value view treats intellectual property as another type of "real" property, typically adopting its law and rhetoric. Other recent developments in intellectual property law, such as the America Invents Act, stress international harmonization. Recently there has also been much debate over the desirability of using intellectual property rights to protect cultural heritage, including intangible ones, as well as over risks of commodification derived from this possibility.[41] The issue still remains open in legal scholarship.

These exclusive rights allow intellectual property owners to benefit from the property they have created, providing a financial incentive for the creation of an investment in intellectual property, and, in case of patents, pay associated research and development costs.[42] In the United States Article I Section 8 Clause 8 of the Constitution, commonly called the Patent and Copyright Clause, reads; "The Congress shall have power 'To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.'"[43] "Some commentators, such as David Levine and Michele Boldrin, dispute this justification.[44]

In 2013 the United States Patent & Trademark Office approximated that the worth of intellectual property to the U.S. economy is more than US $5 trillion and creates employment for an estimated 18 million American people. The value of intellectual property is considered similarly high in other developed nations, such as those in the European Union.[45] In the UK, IP has become a recognised asset class for use in pension-led funding and other types of business finance. However, in 2013, the UK Intellectual Property Office stated: "There are millions of intangible business assets whose value is either not being leveraged at all, or only being leveraged inadvertently".[46]

The WIPO treaty and several related international agreements underline that the protection of intellectual property rights is essential to maintaining economic growth. The WIPO Intellectual Property Handbook gives two reasons for intellectual property laws:

One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the

dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.[47]

The Anti-Counterfeiting Trade Agreement (ACTA) states that "effective enforcement of intellectual property rights is critical to sustaining economic growth across all industries and globally".[48]

Economists estimate that two-thirds of the value of large businesses in the United States can be traced to intangible assets.[49] "IP-intensive industries" are estimated to generate 72% more value added (price minus material cost) per employee than "non-IP-intensive industries".

A joint research project of the WIPO and the United Nations University measuring the impact of IP systems on six Asian countries found "a positive correlation between the strengthening of the IP system and subsequent economic growth."[51]

According to Article 27 of the Universal Declaration of Human Rights, "everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author".[52] Although the relationship between intellectual property and human rights is complex,[53] there are moral arguments for intellectual property.

The arguments that justify intellectual property fall into three major categories. Personality theorists believe intellectual property is an extension of an individual. Utilitarians believe that intellectual property stimulates social progress and pushes people to further innovation. Lockeans argue that intellectual property is justified based on deservedness and hard work.[54]

Various moral justifications for private property can be used to argue in favor of the morality of intellectual property, such as:

1. Natural Rights/Justice Argument: this argument is based on Locke's idea that a person has a natural right over the labour and products which are produced by their body. Appropriating these products is viewed as unjust. Although Locke had never explicitly stated that natural right applied to products of the mind,[55] it is possible to apply his argument to intellectual property rights, in which it would be unjust for people to misuse another's ideas.[56] Locke's argument for intellectual property is based upon the idea that laborers have the right to control that which they create. They argue that we own our bodies which are the laborers, this right of ownership extends to what we create. Thus, intellectual property ensures this right when it comes to production.
2. Utilitarian-Pragmatic Argument: according to this rationale, a society that protects private property is more effective and prosperous than societies that do not. Innovation and invention in 19th century America has been attributed to the development of the patent system.[57] By providing innovators with "durable and tangible return on their investment of time, labor, and other resources", intellectual property rights seek to maximize social utility.[58] The presumption is that they promote public welfare by encouraging the "creation, production, and distribution of intellectual works".[58] Utilitarians argue that without intellectual property there would be a lack of incentive to produce new ideas. Systems of protection such as Intellectual property optimize social utility.
3. "Personality" Argument: this argument is based on a quote from Hegel: "Every man has the right to turn his will upon a thing or make the thing an object of his will, that is to say, to set aside the mere thing and recreate it as his own".[59] European intellectual property law is shaped by this notion that ideas are an "extension of oneself and of one's personality".[60] Personality theorists argue that by being a creator of something one is inherently at risk and vulnerable for having their ideas and designs stolen and/or altered. Intellectual property protects these moral claims that have to do with personality.

Lysander Spooner (1855) argues "that a man has a natural and absolute right—and if a natural and absolute, then necessarily a perpetual, right—of property, in the ideas, of which he is the discoverer or creator; that his right of property, in ideas, is intrinsically the same as, and stands on identically the same grounds with, his right of property in material things; that no distinction, of principle, exists between the two cases".[61]

Writer Ayn Rand argued in her book Capitalism: The Unknown Ideal that the protection of intellectual property is essentially a moral issue. The belief is that the human mind itself is the source of wealth and survival and that all property at its base is intellectual property. To violate intellectual property is therefore no different morally than violating other property rights which compromises the very processes of survival and therefore constitutes an immoral act.[62]

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IV.CONCLUSIONS

Violation of intellectual property rights, called "infringement" with respect to patents, copyright, and trademarks, and "misappropriation" with respect to trade secrets, may be a breach of civil law or criminal law, depending on the type of intellectual property involved, jurisdiction, and the nature of the action.

As of 2011, trade in counterfeit copyrighted and trademarked works was a $600 billion industry worldwide and accounted for 5–7% of global trade.[63] During the 2016 Russian invasion of Ukraine, IP has been a consideration in punishment of the aggressor through trade sanctions,[64] has been proposed as a method to prevent future wars of aggression involving nuclear weapons,[65] and has caused concern about stifling innovation by keeping patent information secret.[66] Patent infringement typically is caused by using or selling a patented invention without permission from the patent holder, i.e. from the patent owner. The scope of the patented invention or the extent of protection[67] is defined in the claims of the granted patent. There is safe harbor in many jurisdictions to use a patented invention for research. This safe harbor does not exist in the US unless the research is done for purely philosophical purposes, or to gather data to prepare an application for regulatory approval of a drug.[68] In general, patent infringement cases are handled under civil law (e.g., in the United States) but several jurisdictions incorporate infringement in criminal law also (for example, Argentina, China, France, Japan, Russia, South Korea).[69] Copyright infringement is reproducing, distributing, displaying or performing a work, or to make derivative works, without permission from the copyright holder, which is typically a publisher or other business representing or assigned by the work's creator. It is often called "piracy".[70] In the United States, while copyright is created the instant a work is fixed, generally the copyright holder can only get money damages if the owner registers the copyright.[71] Enforcement of copyright is generally the responsibility of the copyright holder.[72] The ACTA trade agreement, signed in May 2011 by the United States, Japan, Switzerland, and the EU, and which has not entered into force, requires that its parties add criminal penalties, including incarceration and fines, for copyright and trademark infringement, and obligated the parties to actively police for infringement.[63][73] There are limitations and exceptions to copyright, allowing limited use of copyrighted works, which does not constitute infringement. Examples of such doctrines are the fair use and fair dealing doctrine. Trademark infringement occurs when one party uses a trademark that is identical or confusingly similar to a trademark owned by another party, in relation to products or services which are identical or similar to the products or services of the other party. In many countries, a trademark receives protection without registration, but registering a trademark provides legal advantages for enforcement. Infringement can be addressed by civil litigation and, in several jurisdictions, under criminal law.[63][73] Trade secret misappropriation is different from violations of other intellectual property laws, since by definition trade secrets are secret, while patents and registered copyrights and trademarks are publicly available. In the United States, trade secrets are protected under state law, and states have nearly universally adopted the Uniform Trade Secrets Act. The United States also has federal law in the form of the Economic Espionage Act of 1996 (18 U.S.C. §§ 1831–1839), which makes the theft or misappropriation of a trade secret a federal crime. This law contains two provisions criminalizing two sorts of activity. The first, 18 U.S.C. § 1831(a), criminalizes the theft of trade secrets to benefit foreign powers. The second, 18 U.S.C. § 1832, criminalizes their theft for commercial or economic purposes. (The statutory penalties are different for the two offenses.) In Commonwealth common law jurisdictions, confidentiality and trade secrets are regarded as an equitable right rather than a property right but penalties for theft are roughly the same as in the United States

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