

Comparative Study of Intellectual Property Laws in India and China

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ABSTRACT: *Intellectual property rights is also a significant and essential concern in protecting intellectual property. This is a real obstacle for both advanced and emerging countries. International law has several guidelines and guidance on the rights of intellectual property. However, when the application of the legislation is not wrong, a national legal framework that is perfectly developed is useless. The intellectual property rights in China and India are close to regimes in western economies. Yet IPR security is seen and evaluated poorly by both organisations and institutions in the countries surveyed. Nations are the main regional suppliers of smuggling and falsified merchandise. The author tries to explain and justify variations between Indian and Chinese IPR security in this article entitled "Comparative Study of Intellectual Property Laws in India and China" It also addresses the lists and outlines certain factors affecting the lack of effective international defence of intellectual property rights.*

KEYWORDS: *China, Intellectual Property Rights, India, Loss, Legal.*

INTRODUCTION

There are many countries in modern national economies that have a similar degree of property rights protection and intellectual property rights, and that understand and defend property and its protections differently. Security is strong and does not create fiscal, legal or social difficulties and is also often considered as an important factor in growth and development. However, land rights are undervalued or deliberately violated in certain countries. Sadly, some countries have also evolved quite well. And piracy is rapidly threatened as the source of this development. The key purpose of this paper is to compare legal security and rights of land.

For a short factual examination: China and India are signatories to the Berne Convention on Copyright. The copyright legislation focuses on the 1990 Chinese Copyright Law, amended in 2001, and the 2002 Applied Copyright Law Regulations. Copyright registration in China and India is not subject to requirements. However, in any case or court case it is advisable to register, in case of companies. It must show its ownership.

Registration of the National Copyright Administration- Copyright and related problems in China will be published in China by the authority responsible for the management and control of this country. Registration in India will help prove ownership by confirming ownership. There are legal cases against infringers. In most cases, however, registration for a copyright violation request in India is not mandatory. Registration is made in person or by an official.

Immobilization and safety are differently understood and protected in contemporary national economies. Protection of proprietary and intellectual property rights are very high in many countries and cause few fiscal, legal or social problems and are often widely regarded as a significant factor in growth and development. However, in certain countries the security of property rights is underestimated or deliberately ignored. Unfortunately, some of these countries are also evolving very quickly as a cause of such growth, risking piracy.¹

The main aim of the paper is to compare rights of ownership during the 21st century in China and India. In the first section, the legal basis for proprietary law (international conventions and national legislation), and the enforcement of intellectual property rights, will be set out.

It addresses three important organizations for the protection of international property: the Heritage Foundation, the Fraser Institute and property rights. This is significant because in the next section of these rankings the values for the final indices and locations in China and India are seen and inequalities in the assessment of

¹ Bochańczyk-Kupka D., A comparative analysis of intellectual property rights protection in China and India in the XXI century (Journal of International Studies).

property safety are demonstrated. In the last section on the study of intellectual property rights, the causes for this differentiation are described and elaborated on.

1. IPR in India:

Progress was made on intellectual property rights in India under British rule. The 1940 trade mark law, the 1911 design act and the 1709 copyright act were adopted during this time. In 1856 the first patent law was adopted and in 1859 reintroduced. The Indian Parliament alone will pass patent and design, copyright, innovation and trade mark legislation. Article 49, List 1 of the Seventh amendment and Article 246 of the Indian Constitution created this entry. The agreement on Berne, Paris, Madrid and the patent cooperation agreement have been ratified by India. Since 1995, India has also joined the World Trade Organization (WTO). Patent laws are used in Indian Patent Act 1970 and Patent Roll 2003. A division of the Indian Department of Commerce and Industry is the Registrar for Patents. Eligible to pay the annual renewal fee for 20 years from the date of registration of the patent. Indian patent law must now be filed directly.²

The design laws in India are design law 2000 and design rule 2001. Design rules in India. The design is valid for ten years under Indian rule, perhaps with an extension of five more years. Indian regulations on trademarks are covered by the Trademark Act of 1999 and the Label Rules of 2002. Patents, compositions and logos are governed by the general controller. It reports to the Industrial Policy and Promotion Department.

The Indian police are also empowered to follow marking legislation. This entails searching premises and seizure without a guarantee of alleged counterfeit merchandise. The commercial brand still has Indian law as a form of trademark. They are safe for those seeking a trade of their mark, regardless of the current trade terms. Indian TM shall be valid for 10 years.³

2. IPR in China:

There are many TM within China's legal system, such as registered numbers, registered numbers, certificate numbers and mutual marks. Under Article 8 of China Trademark Law, any person who is capable to differentiate products or services from others naturally, including any terms, instruments, letter, number, three-dimensional indication - any colour symbol. A particular person, legal person or other organization, a certain number of voices and a number of those symbols can apply as a trade mark⁴

Trade dresses, brand names and trade names can also, according to certain conditions, not be stipulated forms of TM (trademarks) according to Chinese trademark legislation; they are largely shielded by law against unfair competition. The legal and not jurisdictional rules with all the rights to these TM.

By registering the trademark with the National Intellectual Property Administration of China (CNIPA), trademark owners can enjoy exclusive trademark rights to the trademark. In China, the early use of a label may also be protected in addition to registration. For example, serious pre-use will defend of infringement of unregistered trademarks.

Under the Chinese trademark law, a famous trademark that is not registered by objection or invalidation may be protected by third parties in the same goods / services. If the mark has historically been used and gained a certain prestige, the Chinese Mark Law does not allow explicit registration of a mark on such goods/services by third parties. Commercial clothing is not a compulsory brand in China. If the identity is not unique, it can continue to allow the identity to be registered, showing that the identity has taken on secondary importance.

Proceedings Costs the complainant can order that in the proceedings the defendant pay the necessary expenses. If the complainant wins, the judge might order that the respondent, including the lawyers' fees, bear a certain portion of the appropriate expenses. The decision on the level of restitution depending on facts presented by the complainant is at the discretion of the court.

Remedies for the trademark owner, the court may decide that the infringer infringes on civil liability, including termination of infringement, termination of negative effects, compensation for damages, and so on. The amount

² Syrma Technology, Intellectual Property Protection in India vs China

³ *Ibid.*

⁴ *Supra* 1.

of damages for infringement of trademark rights is determined according to the actual loss. Owner of trademark When the actual loss is difficult to determine, the amount of the loss can be estimated based on the profit received as a result of the violation. Where the liability of the owner of the mark or the benefit gained by the infringer is difficult to establish, the loss figure can be determined for the respective different uses of the licensed mark under the contractual license. In the event of difficulty in determining the real damage of a trademark owner, the interest of the offender and the licensed marks' license fee, the People's Court shall, depending on the circumstances of the violation, grant restitution for up to 5 million Yuan. At the discretion of the College.

Initiated by Deng Xiaoping in 1978, the "Four Modernization" programme began with access to intellectual property in China. The government enacted provisions on IP Privileges into law as the Chinese economy evolved. An IP system was developed in China three decades later. National law has since been adopted on intellectual property rights. China has established law enforcement authorities to monitor and regulate compliance. The nation entered the World Trade Organization in 2001. China has also ratified the Berne Convention, the Paris Convention, the Madrid Protocol and the Patent Cooperation Treaty. At present, though, it is not a signatory to the Hague Agreement, which allows for only 1 filing in many countries to defend designs.

The National Copyright Office is in charge of the copyright enforcement in China. Registration in India will show that copyright offenders are owned by criminal prosecutions. In general, however, a copyright infringement argument is not needed for registration. The Copyright Office shall register.

China Patent Law covers concepts and models of utility (known as design patents). Patents for invention up to 20 years are covered and utility versions up to 10 years are protected. The monthly charges are applicable to both. The former is seen as the principle of Chinese Patent Law. The first claimant would approve the patent if two individuals apply for the same invention. The Madrid Protocol requires approximately 18 months to file international relations. The Chinese national law can take up to four years for direct registration, while trademarks may be valid for up to ten years. For another ten years, it may be extended forever.

Moreover, there is a considerable difference between the number of patents filed by India and China. A look at one of the reports published by WIPO in 2017 displays the wide gap between the numbers of filings.

3. *Global IP Legislature:*

In accordance with such requirements, the World Trade Organization (WTO) mandates that nations enact intelligence rules. This suggests that the intellectual property rights of developing nations can vary significantly. India and China are part of this. The Berne Convention is signed by both India and China. The Chinese copyright law of 1990 and the copyright implementing rules enacted in 2002 are based on the copyright law. In India or China there is no need to register copyright. In cases where companies need to prove possession in legal proceedings, however, certification is recommended.

4. *IPR Damage Jeopardy in China:*

The implementation of an IP security infrastructure seems to have taken China substantial steps, with too many complaints threatened to exacerbate trade ties at the highest level. Unfortunately, often political rhetoric from the US disregard this and seek to destroy a much more positive friendship.⁵

Western and Japanese businesses have for a considerable time regarded Chinese enterprises as worldwide IP pariahs, awaiting their own formulations and applications. It is clearly difficult to protect IPRS because of their inherent 'shareability' as a limitless number of users will concurrently be used.

Given the recent IP transition in China, Western companies will need to rethink how they develop and market new technologies. By maintaining close links with state owners and other enterprises local politicians can engage in corruptive practices. This guarantees that wealth is generated locally by relationships between officials and local companies. If local corporations raise money and officials from the government receive the

⁵ Shreya Sahoo, Comparative Study: Intellectual Property Laws in UK, US and India.

income of the companies which are often connected with IP theft, they will be shielded even if courts are against the officials of the local government. In China, courts and their officers are always dependent on these local government authorities and only in breaking the links that connect local government authorities to companies can the process be intercepted and regulated.

In reality, since it affects local government officials' revenue, their families and other individuals within their network matrix it is very difficult to sever this bond. The mayor of a Chinese town has an overall responsibility above competitive interests as seen in Figure 1. Reforms would have an effect on safety and protection in the workplace will also put the social stability at risk. Therefore, the mayor must be attentive to the effects on work and tax revenue before a draconian intervention such as the closure of a plant has taken a heavy toleration of the Mayor's office on pollution or IPR violations.



Figure 1: Conflicting Governance Issues

At the end of October 2010, however, a new movement for IPR compliance began. In, a further three months have been extended for the initiative. This latest effort leads the Ministry of Commerce, manages regulatory efforts and legalizes software between the related agencies. Am-Cham-China officials were involved partners in the campaign with the Chinese Government and were satisfied with the performance of several of the government's initiatives.

It is clear, though, that certain areas should be dealt with as soon as possible. Substantial structural questions include insufficient deterrent deterrence of IPR infringements, failure to criminalize infringing market software, local protectionism in the shape of the local brand IPR legislation, disproportionate allocation of copyright rights to copyright authority and prosecution of IP crime, and numerous local enforcement operations.

5. *IPR Defense Guideline in China:*

However, the launch of stringent new IP regulations in China along with increased compliance is changing China's image as an IP sinkhole and many businesses are now moving high-tech companies to China (Scott, 2006). Nonetheless this contentious question is not only about hardwired high-tech products but also about sectors such as pharmaceuticals, electronics, patent and other rights related companies. The changing world does not only have a role to play in this controversial problem.

The Chinese Patent Review Board, for example, invalidated Pfizer's patent for Viagra in 2004 and raised strong criticism of Pfizer's IP Security record. Chinese President Hu Jintao indicated a marked change in direction on his visit to the USA in 2006, stating that IPRS security is "important" to the prosperity of China and its potential to create an economy based more on innovation and not on low-cost production. In June 2006, a court in Beijing substantially backed Viagra's patent defense by overturning the previous decision of the Patent Revision Committee. This was considered to be a possible landmark case for multinational firms pursuing stronger IP security from fake and fake fruit.

Like several other international players, Pfizer failed to realize the need and importance of Chinese brand names and how important they play a role in branding and trademarks strategy. In the absence of the right moment for a Chinese brand name, the Chinese people are invited to invent one. And before the goods entered the market, they did this. The brand, Weige, was the product's daily guide but remained within Pfizer's influence. Chinese branding is one of a number of items that call for change on the international investors' report card.

CONCLUSION

The paper's main purpose was to compare land and intellectual property protection in India and China during the 21st century. There was demonstration of the legal rationale for this protection and final results of classifications that measured the conservation of land in general, as well as intellectual property, were illustrated and clarified. The technique of this organization was also shortly identified due to some major variations in final findings. The findings were sadly so different that the relation between property security in China and India could not be compared.

But, based on the facts, the general level of land and IPR, still very poor and long-standing, can be calculated.

It should be remembered that both nations have the freedom to defend those rights and that they are close enough to Western or American legal frameworks. The same international agreements have been ratified by both nations. Today, though, the biggest concern is that this rule is not applied properly. Historical and cultural occurrences can partially explain the behavior, which is not upheld by the Chinese and Indian businesses, common citizens and even governments. But this can't be the only explanation. Human covetousness, huge profits and all-present corruption are other causes.

The need for IPR protection is based on our liberties and our civil rights, and is not necessarily linked to economic development and stability. It is virtually impossible that research that has a direct link between property rights protection and economic development and stability.

The Chinese and India examples demonstrate that countries can grow very rapidly and even more quickly than others even without this defense. Crime and falsified goods are so profitable that the absence of this security can be readily paid for.