

Intellectual Property Rights

Some issues of concern to India

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OUTLINE

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Objectives

- Knowledge and idea based products rapidly increasing as proportion of world trade
- The importance of brands
- To provide continued stimulus to high value high cost research
- To facilitate technology transfer and FDI to less developing economies?

Brief History of IPRs

- Intellectual property rights existed before WTO, and so did not have to begin from scratch. Existing World Intellectual Property Organisation obligations:
 - Paris Convention for the protection of Industrial property (patents, industrial designs, etc)
 - Berne convention for the protection of Literary and Artistic Works (copyright)
- The Uruguay Round (1986-94)
 - extended the scope and standard of IPRs further
 - Made the extent of protection and enforcement uniform globally
 - Culminated in the 1995 TRIPS Agreement of WTO: effective Jan 1, 1995
- Doha Declaration
 - TRIPS to be interpreted and implemented with respect to public health concerns. Right to grant compulsory licences re-iterated. (Articles 8 and 31 respectively)
 - Recognised trade-off between IPR and impact on prices
 - Extended pharma concessions of LDCs to 2016, underscored transfer of technology to them, and instructed the Council to find expeditious solution to make licensing effective in LDCs.

TRIPS Agreement of 1995

- Basic principles
- Copyright
- Trademarks
- Geographical indications
- Industrial and Integrated Circuits designs
- Patents
- Undisclosed information & Trade secrets
- Competition
- Transition agreements
- Enforcement
- Review in 2000 and every two years thereafter

Basic Principles

- National Treatment: level playing field for nationals and foreigners generally
- Most Favoured Nation Treatment: Equal treatment for all trading partners
- Seeks to strike a balance between producers and users: should result in both technological innovation and transfer of technology

Copyright

- Computer programmes and databases to be protected like literary works under Berne convention
- Rental rights included
- Prevention of unauthorized recording for 50 years

Trademarks

- Defines the kind of signs eligible for protection
- Defines minimum rights of owners
- Service marks included

Geographical Indications

- Protection products with a combination of certain characteristics and place names like champagne, scotch, tequila, etc.
- Higher levels of protection for wines and spirits
- Some exceptions allowed, such as covered under existing trademark, or if it has become generic term such as cheddar.

Industrial and Integrated Circuits designs

- Protected for at least 10 years
- Basis for protecting ICDs is the Washington Treaty on Intellectual property adopted in 1989.

Patents

- Minimum protection of 20 years
- Available for both products and processes
- Government can refuse on grounds of public order or morality
- Exclusions diagnostic, surgical and therapeutic methods, plants and animals (excluding micro-organisms)
- Plant varieties protectable by patents or a special system such as breeder's rights under UPOV
- Compulsory licensing under certain conditions if patent-owner abuses patent or fails to supply to market.

Undisclosed information & Trade secrets

- Trade secrets and other undisclosed information having commercial value protected against breach of confidence
- Subject to reasonable steps taken to keep the information secret.

Competition

- Government has right to to take action where IPR holder restricts competition, impedes technology transfer, or abuses his rights.

Transition Arrangements

- Developed countries to conform within one year
- Developing countries within 5 years
- LDCs within 11 years
- Developing countries have ten years from 1 Jan 1995 to provide product patent protection in areas where this was not available on Jan 1, 1995.
- For pharma and agricultural chemical products, filing of patent applications must be accepted, and EMR given for 5 years or till patent is granted, whichever is earlier.

Enforcement

- Governments to ensure that IPRs can be enforced through their laws, and that penalties are stringent enough to deter further violations.
- A Council for TRIPS monitors working of the agreement and governments' compliance.

TRIPS implementation in India

- Copyright
 - India signatory to Berne convention. India's copyright law amended in 1994 and in some respects more stringent with 60 year protection
- Trademarks
 - Trademarks Act of 1999 has made India compliant
- Geographical indications
 - The Geographical Indication of Goods (Registration and Protection) Act, 1999, enacted.
- Industrial and Integrated Circuits designs
 - Industrial Design Act amended to make it TRIPS compliant. India signatory to Washington Treaty and Semiconductor Integrated Circuits Layout-Design Act, 2000 enacted by Parliament.
- Undisclosed information & Trade secrets
 - No special legislation as common law adequate.
- Patents
 - Patents (Second Amendment) Act of 2002 enacted retrospectively wef Jan. 1, 1995. Patent applications accepted and EMR (excluding Indian systems of medicine) in India granted. However, still possible to manufacture same product through other process.

Issues of concern to India

- Out-sourcing in knowledge based services
- Software piracy declining still an issue: Estimated that India's share in IT and computer software world trade less than 1% officially, but 8% unofficially. However, according to NASSCOM, piracy rates dropped from 89% in 1992-93 to 59% in 1999-2000, and estimated to decline to 25% by 2005.
- Video and music piracy especially rampant in smaller metros, aggravated by demand-supply gap
- Maximum statutory fines too low
- Criminal enforcement not a federal subject: vast variations in enforcement. Even police personnel of provisions.
- Traditional knowledge and bio-piracy by scientists and companies in developed countries: The vast majority of global gene pool in developing and less developed countries. India with 2.4% of global surface area accounts for 7.8% of recorded species. Cases of Neem, turmeric, basmati rice. India creating a Traditional Knowledge Digital Library.
- Negative impact on food security by making HYVs beyond the means of small and marginal farmers in developing countries.

Indian Pharmaceutical Industry

- India's Pharma industry 8% of world market.
- India's Patent Act of 1970 recognised only process patents in pharma, food-processing and agro-chemical sectors. This allowed a rapid expansion in production of low-priced drugs. Indian Firms world leaders in generic AIDS drugs. Indian pharma companies have over the last several years increased their market share relative to TNCs
- Introduction of product patents may negatively impact Indian companies and significantly raise social costs due to higher pricing. Would also affect exports: Case of Cipla's anti-anthrax drug, ciprofloxacin.
- TRIPS does not provide patent protection for items already in the market. So existing drugs will not be impacted.
- India has a huge pool of low-cost trained technicians and researchers and several TNCs have shown inclination to conduct research in India provided the IPR regime is strengthened: Amended Patents Act now TRIPS compliant.
- Indian Pharma companies increasing their R&D expenditure in anticipation of new WTO regime.
- Likely that after 2005 Indian pharma companies might concentrate more on generic rather than patent drugs, and on drugs that have similar therapeutic properties of patented drugs.
- Prices of patented drugs would probably adjust to lower per capita incomes.

India's Pharma Sector Statistics

1999-2000	
No.of Companies (Big)	27000
No.of Companies (Small)	300
Employess (organised)	290,000
Employees (Small)	170,000
Indirect Employment	2400000
Production (\$ Billion) 2000-01	
Bulk	9.05
Formulations	37.17
Foreign Trade (\$ Billion) in 1999-00	16.94
Exports	13.81
Imports	3.13
Balance	10.69

Brainstorming

- Do IPRS promote trade, investment, technology transfers and economic freedom, or act as barriers? Empirical evidence for linkage between a strong IPR regime and trade and investment flows mixed.
- Do IPRs negatively impact developing country exports? TNCs control over 90% of all patents.
- Should protection be for fixed period or on return/cashflow basis?
- Do IPRs go against the history of innovation and spread of new technology? Will they stimulate human technological progress or impede it?
- Adopting IPRs alone not sufficient for transfer of technology, FDI or domestic technological development.
- Countries generally adopt more flexible income at lower per capita income
- Procedure for challenging patents in developed countries an extremely costly affair.