
THE CONNECTION BETWEEN IP RIGHTS AND CONSUMER PROTECTION

Nikita Baloda, Student, BALLB (Hons.), School of Law, NMIMS, Navi Mumbai

ABSTRACT

Innovation and consumer protection have now become interrelated in a technology and wave-driven global economy. Conventionally considered tools for innovation and growth, intellectual property rights (IPRs) are gradually becoming increasingly significant for consumer protection. Despite being designed and intended for intellectual property right protection with a view to ensuring innovation and quality and against infringement and counterfeiting, intellectual property rights protection occasionally experiences a conflict with consumer protection. As a result of this emerging nexus, intellectual property needs a close study from a consumer protection background. This paper, specifically with reference to competition matters, patents, copyrights, and trademarks, further explores the link between intellectual property rights and consumer protection matters in detail. The paper underlines the importance of some intellectual property rights, such as trademarks, in maintaining the interests of the consumer directly, as they enforce an end to fraud, with the possibility of patents and copyrights posing a threat to accessibility and extended rights. More so, in the realm of online consumerism and standard contracts, the paper further explores the theoretical division in the realm of intellectual property, where the consumer is seen strictly as a “user.” The role of TRIPS in achieving a balance between innovation and consumer protection is analyzed in this article. For assessing how different countries take into account the interests of consumers in their intellectual property systems, a comparison between India, US, and EU is also made. The conclusion reached is that effective protection of consumers requires a complementarity between intellectual property law, competition law, and rules against unfair trade practices and not necessarily between intellectual property law and consumer law. Finally, it is pertinent to state that intellectual property protection balancing innovation and public interests needs a balanced treatment.

Key Words: - *Intellectual Property Rights , Consumer Protection, Competition Law, Innovation and Access, TRIPS Agreement*

INTRODUCTION

"Consumer is the sole end and purpose of all production; and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer is said by Adam Smith".¹ In today's economy, innovation and market development go hand in hand. The interrelation of Intellectual Property Rights (IPRs) and consumer protection has assumed even greater significance. Having a legislative regime becomes crucial for consumer protection. Likewise, the country's economy must have a stronger intellectual property rights regime for it to prosper and grow.² Unique to the expression of ideas are laws protecting intellectual property. IPRs protect customers from consuming low-quality products that may be harmful to their health and safety, while they help them buy quality products. In this regard, protecting customers against fraud and ambiguity is another essential function of IPRs. Studying intellectual property rights in relation to consumer protection is therefore essential. The liberalized international trade regime has provided entry to various markets, and consumers are enjoying more options at reasonable prices, but at the same time, there is a rise in unethical and unfair practices on the part of manufacturers and service providers. In this regard, IPR enforcement is a must not only for economic development and innovation, but also to ensure consumer protection. This study examines how an adequately governed IP system, consistent with worldwide standards like the TRIPS Agreement, can be a double protection mechanism—encouraging innovation while rooting consumer protection.³

CONSUMER PROTECTION ISSUES UNDER IP LAW

Various forms of intellectual property have come into being as a consequence of the digital revolution initiated through innovation, technology, and increasing globalization. Intellectual property is thus a matter of concern and interest across the world. The World Trade Organization was established as a world organization to regulate international trade. In GATT round it was held that trade negotiations cover IPR a subject matter. There are lot of agreement

¹ Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, (15 April 1994) 1867 UNTS 14; 33 ILM 1143.

² International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), 1961.

³ Paris Convention for the Protection of Industrial Property, 1883, as revised at Stockholm Revision Conference, 1967, 21 UST 1583; 828 UNTS 305.

exists related to IPR but the most systematic and stricter legal regime TRIPS agreement was introduced by WTO.⁴ Minimal requirements for the protection of all forms of IPR were provided by this model. Nevertheless, in contrast to IPRs, protection of consumer rights is not as strictly regulated by any international legal text.

Number of concerns comes up when it comes to consumer protection under intellectual property. First is IP discourse does not include an idea of consumer, secondly is the absence of the concept of "consumption" of intellectual property.⁵ In most legal systems, including those governed by European and Indian law, "consumers" and "consumption" were excluded from the infringement regime. US legal system, was an exception to this rule.

Existing law for consumer protection is primarily constructed with competition in market, but when multilateral companies seek to promote monopolistic tendencies, it could pose doubts regarding consumer rights protection. The idea of intellectual property does not appear to be controversial because it guarantees specific advantages to customers. The TRIPS Agreement also speaks of flexibilities and prescribes that developing and least developed countries would be provided with transition periods.⁶

CONSUMERS AS "USERS" IN INTELLECTUAL PROPERTY DEBATES: CONCEPTUAL GAPS AND PROBLEMS

The absence of a clear concept of the consumer in the discourse of intellectual property is one of the main conceptual barriers to the integration of intellectual property law with consumer protection law.⁷ The history of intellectual property regulation has ignored the position of the end-user or consumer in favor of protecting the position of the author or owner of the right. Intellectual property is very often not regarded as being "consumed," in the classic sense of the word, unlike physical objects. For instance, the remedy for infringement in intellectual property law hardly ever counts the reader of the book, the watcher in the cinema, or the computer program user as a consumer.

⁴ Berne Convention for the Protection of Literary and Artistic Works, 1886, as revised at Paris, 1971 and amended in 1979, S Treaty Doc No 99-27 (1986).

⁵ Washington Treaty on Intellectual Property in Respect of Integrated Circuits, 1989.

⁶ United Nations Conference on Trade and Development (UNCTAD), United Nations Guidelines for Consumer Protection.

⁷ Julie E Cohen, The Place of the User in Copyright Law (2005) 74 Fordham Law Review 347.

The role of the digital economy has highlighted this conceptual divide. Consumers in the digital environment are increasingly resorting to using electronic devices for accessing trademarked products, patented innovations, and copyrighted works. The constraints of licensing policies, limitations of private usage, and technical protective measures observing consumer behaviors have come to light because of consumer consumption of intellectual property in digital form. Such developments bring to light the need for consumer protection to reach intellectual property consumers, especially in digital market economies that render consumers vulnerable to knowledge asymmetry and contract overreach.

LINK BETWEEN INTELLECTUAL PROPERTY AND CONSUMER RIGHTS

Competition laws and Consumer Protection – The present-day economy was founded on liberalization and free trade, which inspires nations to have open trade.⁸ To advance this idea, the World Trade Organization (WTO) was formed.⁹ Open trade is the objective of most WTO agreements, including intellectual property rights (IPRs).

IPRs confer authors or inventors' exclusive rights that allow them to inhibit unauthorized usage of their work. This provides them to make a profit on their innovation due to these rights. But they can form a monopoly when a single company controls everything about a product, something that can harm consumers by reducing their choices and increasing prices. We require competition in the market in order to stop this.¹⁰

Competition laws ensure fair prices, improved services, and more consumer choice. They also ensure people get safe commodities and sufficient information to enable them to make sound decisions, and they protect against being misled or overcharged. In this respect, competition enhances economic development, reduces poverty, and increases consumer well-being. Various countries have antitrust or competition legislation to avoid businesses from taking advantage of their market dominance and to ensure moral business practices. The Competition Act of 2002 was enacted in India with the specific purpose of encouraging fair competition and not simply controlling monopolies. This legislation is also in line with the TRIPS Agreement, which allows

⁸ Natali Helberger, Making Place for the iConsumer in Consumer Law (2008) 31 Journal of Consumer Policy 385.

⁹ World Trade Organization, Why Competition and Consumer Protection Matter.

¹⁰ The Competition Act, 1998 (UK).

countries to use competition laws to inhibit IP rights owners from using anti-competitive methods or unfair licensing.¹¹

Patents and Consumer rights – Intellectual property rights (IPRs) protect the innovations and creations of inventors and creators to promote innovation. They are remunerated and encouraged to continue innovating new and better products by this legal protection. One of the most common forms of IPR for protecting new concepts is the patent. They provide companies with the means to control how their ideas are utilized and benefit from them.

Patents are a guarantee of quality, but they cost more. This is because patents only go to products that are new, useful, and not obvious. It costs more for customers who need patented products. High-priced proprietary items are unaffordable for some individuals. However, patents play a vital role in encouraging research and development, which ultimately benefits customers by offering standardized and reliable products.¹²

Access to essentials such as food and medicine is not just a consumer rights issue in India; it is seen as an issue of social and economic justice. As much as intellectual property rights and consumer protection may seem to be distinct, it can be seen that most patents are held by multinationals in affluent countries at the cost of consumers in developing countries. Developing and least-developed countries should therefore exercise wise use of the flexibilities provided in the TRIPS Agreement. In order to protect the public interest while promoting innovation simultaneously, they should include these provisions in their domestic law.

Copyright and Consumer rights- The individual use of industrial property is generally not considered infringement, unlike in the case of copyright. However, even individual use can be an infringement of copyright. Mass copying of copyrighted material was difficult previously. But with developing technology, mass duplication has become easy and cheap, which affects the rights of copyright holders. Firm copyright laws are hence necessary in today's world.

Moreover, consumers' roles have been altered. Customers are easily able to get, share, or modify copyrighted material if they have access to the internet. By creating derivative or transformative goods, customers often become artists. Is this permissible? Yes, according to the TRIPS

¹¹ The Competition Act, 2002 (India).

¹² Council Directive 91/250/EEC on the Legal Protection of Computer Programs.

Agreement's Article 13, which allows certain exclusions and limitations. Fair use can be applicable as long as the new work does not harm the market or interests of the original author, especially if it is not for profit.

Trademark and Consumer Rights - Consumer protection and intellectual property rights often conflict when dealing with patents and copyright. However, both legal frameworks support each other in the case of trademarks. Aside from protecting the interests of producers, trademark regulations also protect the public and consumers.

To prevent customers from being misled regarding the authenticity of products or services, trademark regulations are indispensable.¹³ While protecting brand owners' rights is the main goal of trademark law, consumers are indirectly protected as well from counterfeit or non-genuine goods. By the utilization of trademarks, consumers can identify which company is liable for a good or service and thus can make decisions based on past performance or trust. In addition, laws against unfair trade practices and competition ensure that consumers are not deceived and can receive genuine product information.

CONSUMER VULNERABILITY, CONTRACTUAL PRACTICE, AND DIGITAL MARKETS

In the relationship between consumer protection and intellectual property rights is undergoing a paradigm shift because of the emergence of digital and e-commerce platforms. Standard contractual agreements, such as click-wrap and shrink-wrap contracts, are often employed on digital platforms to transfer intellectual property, leaving a consumer with very little scope for negotiation.¹⁴ Such contracts also restrict traditional civil liberties exercised by a consumer in the offline environment through limitations on usage, resale, sharing, and alteration of an intellectual property-protected work.

Also, consumer protection can, at times, conflict with technological safeguards that are aimed at protecting intellectual property rights. These practices may restrict legitimate activity, such as fair use or private copying, even if it is aimed at preventing violations of intellectual property

¹³ Andrea Stazi and Davide Mula, Intellectual Property and Consumer Law, in Ana Ramalho and Christina Angelopoulos (eds), *Crossroads of Intellectual Property* (Nova Science Publishers, 2012).

¹⁴ Directive 93/13/EEC on Unfair Contract Terms.

rights. Moreover, when customers are compelled to agree to a set of conditions that allow copy-rights holders to monitor usage trends, there are concerns about consumer privacy. Over-aggressive protection of intellectual property in such contexts could contravene consumer autonomy and choice, especially if it amounts to an unjustifiable commercial conduct. Consequently, consumer protection regulations are required to adapt in response to new challenges arising from online technological enterprise.

TRIPS AGREEMENT: FINDING A BALANCE BETWEEN CONSUMER WELFARE AND INNOVATION INCENTIVES

The TRIPS Agreement represents perhaps the most significant effort so far to harmonize intellectual property protection across borders while allowing flexibility for domestic policy interests. Even as its immediate focus is the setting of minimum standards of intellectual property protection, the foundational principles of the Agreement reveal a greater solicitude for social and economic welfare. Articles 7 and 8 are particularly germane in this regard, insofar as they emphasize the need to strike a balance between the rights of intellectual property holders on one hand and the interests of users and society at large on the other.¹⁵

The protection of intellectual property rights must facilitate technological innovation in the interest of social and economic welfare, as well as the mutual benefit of the producers and users, as stated in Article 7.¹⁶ On the same basis, Article 8 provides that a member has the right to set up policies that must favor the health, nutrition, and welfare of the people, provided the policies made are consistent with the TRIPS Agreement rules.¹⁷ These articles underline the fact that the rights granted in the field of intellectual property must not be absolute and must therefore not affect the welfare of the consumer in any manner whatsoever. The flexibility provided in the TRIPS Agreement, such as parallel importation and mandatory licensing, can help the consumer's cause without affecting the aims of development and innovation.

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¹⁵ Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), Articles 31, 40, 65–67.

¹⁶ Consumer Protection Act, 2019 (India).

¹⁷ Pedro Roffe, *Resource Book on TRIPS and Development* (Cambridge University Press, 2005).

While consumers are legally protected, what the consumer interest actually is, especially in developing economies, remains uncertain. Governments need to focus on protecting consumers' basic needs like food, water, drugs, and essential services in line with UN guidelines. Consumers play a greater role as market actors, especially in the case of intellectual property (IP), even if consumer legislation largely protects economic interests. Some intellectual property laws, like patents, sometimes work against consumers' interests in making things more expensive or less available, but other laws, like trademarks, clearly help consumers by preventing counterfeiting. While the WTO's TRIPS Agreement sets minimum IP standards for countries, it allows governments the flexibility to find a balance between IP rights, socioeconomic well-being, and the common good.

Various countries, for example, the US and the EU, constructed their consumer protection and IP laws differently. For example, while the EU has laws protecting consumers against unfair contracts and to enforce their rights, the US shields consumers through mechanisms like the Federal Trade Commission, which emphasizes fair markets.

It widens the scope of unfair trade practices, covers e-commerce transactions, allows filing complaints online, creates a strong Central Consumer Protection Authority, and penalizes false advertisements. The aim of this new regulation is to fully safeguard modern customers. Product patents were granted by India in 2005 as part of its complete TRIPS compliance. Most people were worried about their ability to get medicines as a consequence, but India utilizes the TRIPS flexibilities to protect its customers' interests. In spite of being criticized for failing to prioritize patent holders' research and development interests, the Indian Supreme Court has time and again upheld consumer rights.

INDIA AND THE EU COMPARED: ELEMENTS THAT SHAPE THE INTELLECTUAL PROPERTY AND CONSUMER PROTECTION ENVIRONMENT

Many approaches have been adopted by different countries to achieve a balance between consumer protection and intellectual property. Fair use provisions and the first sale doctrine that enable consumers to resale lawfully purchased articles are some of the measures that ensure

consumer protection in the US.¹⁸ Within the context of intellectual property rights, this demonstrates an early recognition of customers.¹⁹

The development of consumer protection laws keeping up with those of intellectual property rights in the European Union is due to guidelines related to unfair contract terms, consumer deception, and digital consumerism. The safeguarding of consumer interests against unfair contractual practices is of utmost importance to the European Union, particularly with the increasing use of digital consumerism. India's approach to this area is very conservative as it incorporates consumer interests into its intellectual property laws. The modern and TRIPS-compliant intellectual property framework of India is further strengthened by The Consumer Protection Act of 2019, which primarily targets ecommerce sites, deceitful advertising, and unfair trade practices. The relevance of consumer interests within the ambit of intellectual property laws is emphasized by the courts of India with their perpetual forays into public interests within matters related to access to essentials such as drugs.²⁰

CONCLUSION

Contrary to popular opinion, a far-reaching nexus is established in regard to consumer protection as well as intellectual property rights. In modern times, there arises a fresh dimension with regard to consumer participation in a global economy not merely in their context of utilizing commodities/services but even with regard to persons who are utilizing or at times adapting intellectual property works. This calls for a deeper awareness on their part concerning intellectual property rights with regard to their consumer protection.

Overemphasis on enforcing intellectual property can have a negative effect on consumer availability, affordability, and independence despite its need to facilitate innovation, ensure quality, and prevent fraud. On the other hand, consumers can have access to harmful and counterfeit products because of a lack of safeguards. Thus, finding a middle ground to protect innovation and play a role in safeguarding consumers is a challenge. The TRIPS agreement

¹⁸ The Sherman Act, 1890 (USA).

¹⁹ The Clayton Act, 1914 (USA).

²⁰ Shamnad Basheer and Prashant Reddy, "Ducking" TRIPS in India: A Saga Involving Novartis and the Legality of Section 3(d) (2008) 20(2) National Law School of India Review 131.

offers its members the liberty to make use of a middle ground based on its societal need by giving utmost priority to social welfare and interests.²¹

Ultimately, consumer protection law will not be able to ensure enough protection for consumers. The various rules concerning unfair competition practice, competition law, and intellectual property law must be harmonized. For intellectual property protection to ensure its original mission not only as a monopoly in a capitalistic system but also as a way that promotes innovation and public interest and informed decision-making by consumers, every country must make changes in its legal system.

²¹ Alvin Toffler, *The Third Wave* (Morrow, 1980).