



ACCENTUATING THE LEGAL RELATION BETWEEN INTELLECTUAL PROPERTY LAW AND CONSUMER RIGHTS IN INDIA

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ABSTRACT

The rise of globalization has brought reciprocity, increased competition, and access to global markets, resulting in more options available to consumers at reasonable rates. However, this has also resulted in unfair practices being used by suppliers or manufacturers of the goods and services. Therefore, the establishment of a legislative framework becomes essential for the protection of consumers. Similarly, a more robust intellectual property law is necessary for the country's economy to thrive and develop.

In addition to giving creators and innovators the sole right to use their creations, intellectual property law benefits consumers by guaranteeing products and services of a higher calibre both in online and offline mode and also protects the consumer rights from IPR infringements, unfair trade practices, cybersquatting, domain name disputes etc. Hence, examining the relationship between consumer protection law and intellectual property law becomes pertinent. The main objective of the paper is to pinpoint the significant areas of intellectual property that relate to consumer rights such as Competition, Patent, Copyright, Geographical Indication, Trademark, Domain Name. The paper seeks to emphasize how important the IPR regime is for safeguarding consumer rights. Further, an analysis will be conducted in accordance with the minimum standards specified in the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement, even though the factors examined when determining intellectual property and consumer protection issues in each country may differ.

Keywords: Intellectual Property Law, Consumer Rights, TRIPs, Domain Name

I. INTRODUCTION

A digital revolution has been sparked by advancements in technology, innovation, and globalization, leading to various types of intellectual property. Consequently, intellectual property has become a topic of global attention and concern. As an international organization, the World Trade Organization (WTO) was created to regulate international commerce. IPR was a topic of trade discussions in the most recent GATT round¹. A more formal and stringent legal regime was made possible by the WTO's formulation of the TRIPS Agreement, even though several other international agreements already covered the legal system about various

¹ WTO, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, 1867 U.N.T.S. 14, 33 I.L.M. 1143 (1994).



types of intellectual property rights.² This system established minimal requirements for IPR protection across the board. Conversely, no international legal text regulates the protection of consumer rights to the same degree as intellectual property rights.³ The paper is predicated on the idea that to defend consumer rights, these two distinct regimes must be balanced.

Several concerns occur when considering consumer rights or protection under intellectual property laws. The first is that the IP does not include the notion of a consumer. The second is that the concept of 'consumption' in the work of IP is absent. A book reader, for example, is never considered to be someone who consumed the information contained inside it in the same way that other tangible objects or products are. Consequently, intellectual property-related works are inadvertently excluded from the category of consumable products or subject matter, and similarly, their readers, viewers, and users are also not considered consumers.⁴

Excluding 'consumption' and 'consumers' from the intellectual property regime was a prevalent practice in numerous legal systems, including European and Indian law. The American legal system was a notable exception to this, though. With the arrival of the digital age, the situation changed as electronic consumption of intellectual property-related works was acknowledged and included in the rights of IP owners. Nonetheless, it has been noted that there is a clash between the interests and rights of users of digital information. For example, stringent contract terms of purchase restrict how consumers can use intellectual property by prohibiting private copying or limiting their ability to play the work whenever and wherever they choose.⁵

There are also privacy concerns, as most of these contract conditions require consumers to sign privacy policy provisions that grant IP holders the authority to govern or analyze consumer behavior. It is therefore vital to broaden the realm of consumer protection for intellectual property consumers in light of the current scenario.⁶

The current legal framework of consumer protection is primarily focused on *market competition*. However, the promotion of monopolistic tactics by large companies may give rise to issues over the protection of consumer rights. Since it guarantees specific advantages for customers, the idea of intellectual property appears to be justifiable. Additionally, the TRIPS Agreement addresses flexibilities and stipulates that developing and developed countries will be granted transition periods.⁷

² Key IPR obligations adopted prior to TRIPS Agreement include, amongst others, the International Convention for the Protection of Performers, Producers, of Phonograms and Broadcasting Organisations (the Rome Convention), 1961, Paris Convention for the Protection of Industrial Property, as last revised at the Stockholm Revision Conference, Mar. 20, 1883 21 U.S.T. 1583; 828 U.N.T.S. 305, Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris on July 24, 1971 and amended in 1979 S. Treaty Doc. No. 99-27 (1986), and the Washington Treaty on Intellectual Property in respect of Integrated Circuits, 1989.

³ UNCTAD, United Nations Guidelines for Consumer Protection

⁴ Julie E. Cohen, 'The Place of the User in Copyright Law' (2005) 74 FLR 347 Georgetown Public Law Research Paper No. 814664 <<https://ssrn.com/abstract=814664>> Accessed on 22 Dec 2024.

⁵ Natali Helberger, 'Making Place for the Consumer in Consumer Law' (2008) 31 JCP 385.

⁶ Niva Elkin Koren, 'Making Room for Consumers under the DMCA' (2007) 22(3) Berkley Technology Law Journal 1 <<https://ssrn.com/abstract=1024566>> accessed on 19 Dec 2024.

⁷ TRIPS Agreement, Part IV, Articles 65-67.



The study aims to find out the extent to which intellectual property rights safeguard consumer rights and the circumstances in which granting intellectual property rights undermines consumer protection. It also explores the necessity of striking a balance between these two complementary yet conflicting legal regimes. It is therefore pertinent to examine the regulation and function of these two areas of law. It may seem unnecessary to establish the relationship between IPR and consumer protection at first, but it is important to understand how the two areas of law are related. This has been addressed under four distinct sections based on the TRIPS Agreement's applicability to each.

II. THE CORRELATION BETWEEN INTELLECTUAL PROPERTY AND CONSUMER RIGHTS

A. LAWS GOVERNING COMPETITION AND CONSUMER PROTECTION

The principles of liberalization and free trade form the foundation of contemporary economic systems.⁸ Trade liberalization on a progressive basis was the primary objective behind the formation of the WTO. Almost all of the agreements implemented under the WTO reflect this goal. The exclusive rights granted to the inventor of intellectual property (IP) to prevent others from using it without the IP holder's consent or to permit usage only in exchange for a royalty payment are known as intellectual property rights. Granting monopolistic rights and enabling the IP holder to profit commercially from their creation is the fundamental goal of acknowledging IP rights. However, monopolies in the market could lead to unfavorable competition that compromises consumer rights. As a result, controlling market competition is important. A well-crafted competition law can be a useful instrument for striking a balance between consumer rights and IP protection. Benefits to consumers from competition include more options, more affordable prices, improved services, freedom from monopoly and deceit, and freedom from dominance. In this way, consumer welfare is generated by competition law. Because of competition, customers are shielded from predatory pricing and have access to safe products, enough information to make informed selections based on their needs and preferences, and effective redress.⁹

Therefore, when combined, competition and consumer protection can significantly contribute to the reduction of poverty and the advancement of economic progress.¹⁰ All across the world, antitrust and competition laws mainly focus on controlling and outlawing the use of market power in any manner to maintain market competitiveness, or honest and open businesses.¹¹

⁸ The WTO is based on four primary principles: reciprocity, market access, non-discrimination, and fair competition. These ideas are all dependant on one another.

⁹ UNCTAD, Competition and Consumer Protection <<https://unctad.org/Topic/Competition-and-Consumer-Protection>> accessed on 02 Dec 2024.

¹⁰ Ibid.

¹¹ There is frequent overlap in the terminology used to refer to trade practices legislation (United Kingdom), anti-trust law (United States of America), anti-monopoly law (China), and competition law (India). Both antitrust and competition law apply to it in the European Union. Please refer to the following: the USA's Clayton Act of 1914 and Sherman Act of 1890; the UK's Enterprise Act of 2002 and the India Competition Act of 2002.



The introduction of the Indian Competition Act, of 2002 was intended to divert attention from suppressing monopolistic practices to fostering competition. TRIPS Agreement is adhered to by the Act. The TRIPS Agreement allows competition law to be enforced in relation to anti-competitive licensing practices and circumstances.¹²

B. LAWS GOVERNING PATENT AND CONSUMER RIGHTS

Innovations facilitate advancement in societies and communities. The purpose of preserving the innovator's and creator's intellectual property (IP) is to encourage creativity. This can be achieved by compensating these creators for their labour by identifying and defending their IP, which serves as an incentive for them. These rewards and incentives motivate researchers and creators to expand their research and provide consumers with cutting-edge products. As a result, patents help customers by offering them cutting-edge, high-quality products and shielding them from inferior or tainted goods. However, the primary use of patents as a type of IPR by multinational corporations to profit from their R&D results puts developing and un-developed countries in a tough position because they recognize the exclusive rights of patent holders in circumstances involving life-saving or vital goods and products.¹³

Patents provide consumers with products of superior quality, but higher quality also means higher costs. The general people do not have easy access to the expensive patented goods. Innovation-related incentives are produced by the workings of the market. The utility and availability of a product are the primary determinants of its demand. Patents are awarded to goods that meet the N-U-N requirements of novelty, usefulness, and non-obviousness. Hence, the cost to consumers of patent-protected goods must increase. A prime example of this is the pharmaceutical industry, where patented drugs are expensive, but generic manufacturers enter the market and lower the cost of the identical medication once the original patent expires.¹⁴

In conclusion, we can state that all consumers who use patent-protected products might not be able to purchase expensive patented goods or procedures. Long-term patent granting, however, aims to support R&D and innovation, which eventually benefits consumers through the provision of standardized goods. The consumer is best served by standardization in laws about consumers. Ensuring the availability of necessities like food and medication falls under the purview of economic and social justice in India rather than consumer rules. The States must establish mechanisms for consumer protection, and patent laws are for the economic advantage of the country. In this limited sense, it can be claimed that intellectual property rights and consumer protection are not incompatible or connected. However, a broader reading of the

¹² The main operational clauses are found in Articles 40 and 31, particularly 31(k). Furthermore, Article 8.2 acknowledges in general that appropriate actions can be required to stop right holders from abusing their intellectual property rights.

¹³ Novartis v Union of India & Others AIR [2013] SC 1311.

¹⁴ Rajoria, Dr Krati, 'Consumer Protection in India and Intellectual Property Rights: An Analysis' (2022) Intellectual Property Rights in Knowledge Era: Changing Contours, ISBN: 978-93-91088-21-7, (2022)] DPIIT IPR-CHAIR, Osmania University, Hyderabad., <<https://ssrn.com/abstract=4266688>> accessed 15 Dec 2024.



scenario paints a different image. At the expense of underdeveloped and developed countries' consumer interests, the majority of multinational corporations that apply for patents are headquartered in developed, industrialized nations.¹⁵ Hence, developed and undeveloped nations must utilize the pertinent sections of the TRIPs and incorporate them into their national laws.

C. LAWS GOVERNING COPYRIGHT AND CONSUMER RIGHTS

While acts intended for personal use may constitute copyright infringement, the private use of industrial property does not technically qualify as infringement. Before technological advancements, large-scale reproduction or duplication of copyrighted works was challenging. However, with the progress of technology, mass reproduction has become feasible at an extremely low cost, which has had a detrimental impact on the rights of copyright holders. This necessitates the implementation of laws to address copyright infringement in the current context. Furthermore, the function of consumers has evolved. The Internet provides consumers with extensive access to copyrighted information. The Internet enables users and consumers to obtain and utilize copyright-protected works, as well as modify and distribute them. Consumers who acquire copyrighted works are shown to be the creators when they produce derivative or transformative works. The TRIPS Agreement's Article 13 permits specific exclusions and restrictions. Art is advertised as a commodity on digital platforms; however, the fair use theory must be followed with decency, adhere to the standards, and not be used for profit.¹⁶ There is no reason to exclude the consumer-turned-creator from the fair use doctrine insofar as the transformative work is concerned, provided that it does not contradict the objectives and market of the original author. Furthermore, strict copyright regulations might have a detrimental effect on customers in developed and undeveloped nations.¹⁷ However, copyright law addresses this, not consumer legislation. On the other hand, technical protection measures (TPM) on digital platforms are not always well understood by individual consumers.¹⁸ The creation, administration, and distribution of digital content are safeguarded by the employment of TPMs, but there is a possibility that this also compromises several consumer rights that have long been established.¹⁹ To stop the abuse of their protected work, authors, makers, and creators must be empowered; yet, this empowerment must not be given undue weight to the detriment of the public interest or the over-protection of private rights.²⁰

D. LAWS GOVERNING TRADEMARKS AND CONSUMER RIGHTS

¹⁵ This has been discussed in the next heading of the paper in detail.

¹⁶ Rebecca Tushnet, 'User-Generated Discontent: Transformation in Practice' (2008) 31 Colum. J.L. & Arts 113.

¹⁷ The DU photocopy issue serves as a prime example of how challenging it is for developing countries like India to adhere to stringent copyright laws. In these situations, emerging and least developed nations benefit from the fair use theory. <<https://thewire.in/education/du-photocopy-case>> accessed on 03 Dec 2024.

¹⁸ Supra note 4

¹⁹ Dan L. Burk and Julie E. Cohen, 'Fair Use Infrastructure for Rights Management Systems', (2001) 15 HJLT 41.

²⁰ Supra note 4



While there is potential for an issue of interest between consumer protection and IPR forms like copyrights and patents, both legal systems complement and improve each other in the case of trademarks. Trademark laws safeguard the public, consumer, and producer interests. A consumer is a person who purchases or rents products or services from businesses for their own needs, and they should be shielded against fraud.²¹

Some regulations exist to shield consumers against fraud, and trademark law serves as a safeguard against fraud concerning the legitimacy of commodities, services, or products. It serves as an indirect safeguard against phony and fraudulent goods and services for consumers. The main goal of trademark laws is to safeguard the rights of manufacturers and industrialists against the misuse of their brands without authorization or consent.

Trademark protection laws facilitate the creation of a connection between the consumer's intended purchase of a product or service and the organization responsible for its production or marketing. This empowers the consumer to select from a diverse range of offerings, including those that he is inclined to invest in or has confidence in.²² The competition law, often known as the laws prohibiting unfair activities, promotes consumer education and forbids the deceptive marketing of goods and services.

E. LAWS GOVERNING GEOGRAPHICAL INDICATIONS AND CONSUMER RIGHTS

A Geographical Indication (GI) is an indication applied to products that are primarily identifiable to a certain geographic origin and have qualities, reputations, or other attributes that are peculiar to that origin. Principally, the Geographical Indication of Goods Act, of 1999 was passed to regulate the registration and enhance the safeguarding of geographical indications (GIs) that pertain to merchandise.

In accordance with the Act, a "Geographical Indication" is defined as an indication that certain goods, whether manufactured, agricultural, organic, or natural items, are produced, originated, or were manufactured in a nation, region, or locality within that nation, where a particular quality, reputation, or additional feature of the goods is primarily due to its geographical source, or, in the case of manufactured products, where one of the procedures of either the manufacturing process or of analyzing or preparing the goods related takes place.

The "Registrar of G.I." is the Controller-General of Patents, Designs, and Trade Marks, who works for the Ministry of Commerce and Industry's Department of Industrial Policy and Promotion (DIPP). The Geographical Indication of Goods (Registration and Protection) Act, 1999, as well as the Rules that follow, are administered by the Geographical Indications Registry (GIR), under whose direction and supervision the GIR operates.

²¹ WIPO, The Role of Industrial Property in the Protection of Consumers, <https://www.int/edocs/pubdocs/en/wipo_pub_648.pdf> accessed on 12 Dec 2024.

²² Regarding geographical indications, the same rule is applicable. It facilitates the consumer's selection process by establishing a connection between the product in question and its designated location of origin.



GIs, or geographical indicators, serve as source identifiers by assisting consumers in determining the location of the items' origin as well as serving as a barometer for the quality, reputation, and other distinguishing features of the goods that are mostly attributable to that location.

Unauthorized parties that duplicate or fraudulently use Geographical Indications (GIs) harm consumers and genuine producers alike. As a result, the former are more prone to be duped when they receive a cheap knockoff that they mistakenly purchase as authentic goods with particular features. As a result of having their valued business taken away from them and having their developed reputation for the items tarnished, the producers experience losses and damages.²³

The following are some advantages of registering geographical indications:

- it gives Indian G.I the legal protection, which boosts exports;
- it stops others from using a registered geographic indication without authorization;
- it fosters the economic well-being of those who produce goods in that region;
- it advances consumer welfare by offering goods of high quality and reputation; etc.

Nevertheless, certain GIs are exempt from registration under the Act; consumers must be thoroughly informed of this. These include: -

- When GI has evolved into a generic term, i.e., names of products that are now commonly used but no longer have any original meaning;
- If using GIs is likely to mislead the public, create confusion, violate any laws now in effect,
- G.I. which involves scandalous or obscene material, harm any group within society, etc.

Geographical terms cease to serve as indications of place of origin when they are employed to designate a category of product rather than to specify the location of that product. It has been acknowledged that customers also require this information to be.²⁴

F. DOMAIN NAME AND CONSUMER RIGHTS

In contemporary society, domain names have emerged as an integral component of an enterprise's reputation and are prominently featured across diverse media platforms such as posters, publications, and television advertisements.²⁵ Similar to trademarks, domain names also function as a means of identifying the source or ensuring the quality of a business entity.²⁶

²³ Maria Markova, 'Intellectual Property Rights and Consumer Behaviour' (2017) *Advances in Economics and Business* 5(1): 29-32 <<https://www.hrpub.org/download/20161230/AEB4-11808139.pdf>> accessed 15 Dec, 2024.

²⁴ The Preamble to the TRIPS Agreement

²⁵ Intellectual Property Rights in Cyber Space, Domain names and trademarks (2000), <<http://cyber.law.harvard.edu/property/domain/>> accessed on 15 Dec 2024.

²⁶ Ibid.



Notwithstanding the aforementioned similarities, it is imperative to acknowledge that the registration procedure for domain names is completely independent and distinct from the method of trademark registration.²⁷ The trademark registration process is known for its extended duration, frequently lasting for several months. In contrast, the process of domain name registration functions based on the premise of "*first come, first serve*," where the major criterion is the distinctiveness of the domain name being registered.²⁸ Nevertheless, the straightforward procedure of registering a domain name has emerged as a fundamental catalyst for numerous conflicts. The permissive registration procedure incentivized cyber-squatters to swiftly acquire domain names that closely resemble trademarks or names, with the intention of demanding excessively high sums in exchange for transferring or selling these registered domain names to the rightful and interested stakeholders.²⁹ The multinational corporation known as Microsoft also fell victim to the actions of cyber squatters. A domain name, Mikerowesoft.com, was registered by a Canadian teenager named Mike Rowe, bearing a striking resemblance to the trademark and tradename 'Microsoft', potentially causing confusion and deception. Prominent individuals such as Paris Hilton, Jennifer Lopez, and Madonna have also encountered instances of cybersquatting, necessitating legal intervention to address the unauthorized use of domain names and pursue remedies such as the cancellation or surrender of the disputed domains.

In essence, cybersquatting is the act of registering a domain name that is a trademark, with the intention of exploiting the established reputation of said property, which is actually owned by another individual, for personal gain.³⁰ Cybersquatting occurs when a registered domain name is used in bad faith, with the aim of unfairly profiting from the legitimate trademark owner and its associated domain.³¹ The typical approach employed by cyber squatters involves initially doing a search for a widely recognized trademark that possesses substantial value and is closely linked with a reputable brand. Subsequently, they proceed to ascertain whether the trademark's owner has established an online presence in the form of a website. If not, then it is worth considering the possibility that the owner can perhaps utilize it as a website at some point in the future. If a cyber squatter is able to identify a trademark, they may then proceed to register it as a domain name, with the expectation that the rightful owner of the brand will eventually approach them to acquire the domain name. The individual engaging in cybersquatting can subsequently derive financial gain from this circumstance by selling the domain name to the legitimate proprietor.

The level of cybersquatting activities in this digital era is increasing, and it is very essential for the legitimate owners to protect their domain names in cyberspace. There is no legal protection against cybersquatting in India. Due to the non-extraterritorial nature of the Trade Marks Act of 1999, the domain names are not adequately protected. However, our Indian courts have

²⁷ John D Mercer, 'Cybersquatting: Blackmail on the information superhighway', (2000) 6 BUJ of Sci & Tech 11.

²⁸ Ankita Goel, 'Trademarks and Domain Names', (2004) 2 COMPLJ 113.

²⁹ Ibid.

³⁰ J Thomas McCarthy, 'Trademarks, Cybersquatters and Domain Names', (2000) 10 DJArt & Ent L 231.

³¹ Hasan A Deveci, 'Domain Names: Has Trade Mark Law Strayed from its Path?' (2003) 11 IJLIT 220.



implemented the principle of passing-off to protect domain names from cybersquatting. Apart from litigation there are two mechanisms which protect domain names through arbitration procedure. The initial mechanism to be considered is the Uniform Dispute Resolution Policy (UDRP), which has been created by the Internet Corporation for Assigned Names and Numbers (ICANN). This approach efficiently and successfully safeguards the rights of trademark owners, without necessitating recourse to legal proceedings in a court of law. Before the establishment of the Uniform Domain-Name Dispute-Resolution Policy (UDRP), conflicts regarding domain names were often settled through extrajudicial settlements or legal proceedings. Additionally, the National Internet Exchange of India (NIXI) developed the INDRP policy, which mirrors the Uniform Domain-Name Dispute-Resolution Policy (UDRP), in order to establish a process for resolving disputes related to the .in country code top-level domain (ccTLD) in India. However, the aforementioned policies exhibit distinct variations that have been emphasized by the judiciary.

III. TRIPS AGREEMENT AND CONSUMER PROTECTION: TRENDS IN INDIA, UK, AND USA

As previously mentioned, a solid correlation exists between various types of IPR and consumer rights. Consequently, it is possible to assert that consumer interests have entered the domain of IPR. Even with consumer protection laws, it is still unclear what exactly qualifies as a consumer interest. According to the UN Guidelines, Member States should, when necessary, prioritize areas of critical concern for the welfare of the consumer, such as food, water, medicines, vitality, and public utilities, and address the unique aspects of the travel industry, to advance consumer interests, particularly in developing nations.³² The Guidelines discuss many facets of consumer interests and emphasize that enacting legislation to safeguard consumer's rights is essentially the responsibility of consumer protection laws. However, this is a limited perspective that considers a consumer solely in terms of safeguarding his economic interests. In a larger sense, a consumer might be thought of as a participant in the market. Justifiably, *Ansgar Ohly* and *Josef Drexel* have questioned why we should limit our consideration of a consumer to a weaker party whose rights need to be safeguarded against violation.³³ A consumer's responsibility is broader, particularly when it comes to intangible property.

Intellectual property is important for protecting consumers, but not all types of IP protect consumer rights. In addition, consumers may need protection from laws that enforce IP rights excessively³⁴. For instance, copyright laws only sometimes help consumer protection, patents

³² United Nations Guidelines for Consumer Protection <https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf> accessed on 12 Dec 2024.

³³ Ansgar Ohly, 'TRIPS and Consumer Protection' in H. Ullrich, R. Hilty, M. Lamping, J. Drexel (eds) TRIPS From Trade Rules to Market Principles (25 Springer, Berlin, Heidelberg 2016).

³⁴ Ibid.



are not a particularly effective tool for it, and trademark laws are unquestionably considered to be consumer protection laws.

Although the TRIPS Agreement does not specifically address consumer concerns, Articles 7 and 8 are sufficiently phrased to take them into account when interpreting and applying the agreement.³⁵ The principal aim of the TRIPS agreement, which was incorporated into the World Trade Organisation, was to establish minimum standards for various intellectual property rights (IPRs) that member states must adhere to. This allowed member states to retain the autonomy to incorporate more comprehensive or strict provisions into their domestic legal systems.³⁶

The interpretation of the TRIPS Agreement is based upon three fundamental principles: "mutual advantage," "social and economic welfare," and "balance of rights and obligations."³⁷ This suggests that the recognition and implementation of intellectual property rights (IPRs) are influenced by higher social standards and that a delicate balance must be struck between the exclusive rights granted to IP owners and the welfare of society in terms of the proliferation and advancement of current technologies. Therefore, when examining the implementation of Article 7 under the TRIPS Agreement, it is crucial to consider the objectives concerning consumer protection. The purpose of "mutual advantage for users and producers of technological knowledge" is to re-establish the Agreement's fundamental essence. While the purpose of the Agreement is explicitly stated in the Preamble as "effective and adequate safeguarding of IPR," this argument in Article 7 aims to clarify that the strict standards outlined in the Agreement for IP protection are merely a mechanism to achieve another objective.³⁸ According to historical evidence, these objectives are to provide the general public with access to high-quality, technologically advanced products.

As previously stated, intellectual property protection grants exclusive use rights to a protected work in exchange for complete disclosure of the work. This monopoly gives the right to prohibit others from utilizing the work. Furthermore, an analogy can be made between Article 7 and the substantive provisions of the TRIPS Agreement. The language of Article 7 pertains to user access, which is emphasized predominantly in the exception provisions of Article 13 concerning copyright, Article 17 concerning trademarks, and Article 30 concerning patents. It has been determined that the phrase "and in a manner conducive to social and economic welfare" signifies that "higher social values govern the recognition and enforcement of intellectual property rights." The statement "and to a balance of rights and obligations" serves

³⁵ Ibid.

³⁶ The Preamble to the TRIPs Agreement

³⁷ Article 7 states that "The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations".

³⁸ Pedro Roffe, 'Resource Book on TRIPS and Development' (New York: Cambridge University Press, 2005) 119.



to emphasize that the protection of intellectual property rights is not an isolated occurrence. The purpose is to recognize that safeguarding intellectual property rights is not the sole objective.

Additionally, Article 8 is a noteworthy provision that could prove beneficial in formulating suitable domestic laws that address the concerns of intellectual property users (IP) users regarding rights infringement and consumers seeking remedies for rights abuse. As per the conditions outlined in Article 8.1, "Members may, when establishing or amending their rules and regulations, incorporate safeguards for public health and nutrition, as well as advancements in sectors critical to their socio-economic and technological progress." However, it is important to note that these measures must remain under the provisions of this agreement. Article 8.2 additionally establishes that "suitable actions, as long as they align with the agreement's provisions, may be implemented to stop the owners of the rights from abusing their intellectual property rights or from engaging in activities that unjustly hamper commerce or negatively impact the global transfer of technology."

Since Articles 7 and 8 of the Agreement require Member States to keep their domestic laws in compliance, they are allowed to interpret the provisions of the TRIPS Agreements according to their needs and circumstances.

In the context of intellectual property, the terms "user" and "consumer" have diverse meanings among legal systems. Thus, it becomes vital to examine how the idea of the consumer has progressively changed in the US, Europe, and India, as well as how their rights are upheld. The definitions of "consumer" and "rightful user" must be studied first when examining how IP law and consumer law connect in both the US and EU legal systems. Beginning with the Progressive Era and ending with President Franklin D. Roosevelt's administration, the USA's early 20th century established numerous agencies and laws, primarily about state, local, and federal consumer protection. However, the Consumer Bill of Rights, which President Kennedy introduced in the 1960s, paved the way for the present consumer protection movement. This demonstrates that, in comparison to other jurisdictions, the contemporary concept of the consumer as it exists today developed very early in the USA.

The Federal Trade Commission ("FTC") is the government body responsible for protecting consumers. Although not the sole agency in operation, it is a leading one. The Federal Trade Commission (FTC) works on several consumer protection regulations both independently and occasionally in conjunction with other government agencies. The goal is to give customers access to an honest marketplace where the highest-quality goods are offered at competitive costs.³⁹

³⁹ Spencer Weber et al, 'Consumer Protection in the United States: An Overview', (2011) EJCL <https://www.researchgate.net/publication/228208216_Consumer_Protection_in_the_United_States_An_Overview> accessed 25 Dec 2024



Under the American legal system, there is debate over the connection between consumer law and intellectual property law. Intellectual property laws in the United States are governed by federal law, whereas state laws govern consumer laws. As a result, state laws cannot be used to restrict or broaden IP laws., notwithstanding the basic idea of contract freedom, the regulation of intellectual property contractual practices is freely accepted in the EU legal framework.⁴⁰

The Advisory Committee of Consumers was established in 1973 to bring the perspective of consumers to the attention of the Commission on the ongoing European studies on contractual practices. This marked the beginning of the European policy of consumer legal protection. In that same year, the Consumer's Rights Charter and the concurrent "Preliminary Programme" both made clear how important it was to shield consumers from dishonest marketers. The document specifically identified five needs: 1) safeguarding the health and safety of consumers; 2) safeguarding their economic interests; 3) offering legal counsel, support, and damages compensation; 4) providing sufficient information and education to consumers; and 5) maintaining ongoing communication with consumer associations.⁴¹

Subsequently, with the 1986 revisions to the European Economic Community Treaty and the 1992 Maastricht Treaty, consumer law gained more prominence inside the European Community and was given specific policy treatment. In order to provide consumers with enhanced legal protection, the EEC Treaty inserted Article 100A in 1986. Two years later, in 1992, the eleventh title—which is devoted exclusively to consumer law—was added.

It was believed that the introduction of a single set of laws that all market participants would have to abide by, rather than citing the laws of each country involved in each trade, would help to promote a common market through trade between people of different nations. This is why there has been a significant increase in interest in consumer legal protection.

The Unfair Contract Terms Directive, also known as Directive 93/13/EEC, contains the first official definition of a consumer. The definition of a consumer is typically interpreted narrowly by the European Court of Justice, which states that a consumer may only be a natural person who enters into a contract to meet the requirements of themselves or their family. In doing so, the European Court solely applies objective, uniform criteria, and disregards the interests of the contracting party.

The phrase "users" in Article 7 of the TRIPS Agreement may be interpreted here to refer to both producers and end users who want to incorporate the IP-protected works into their own manufacturing processes. In most cases, the terms "consumer" and "user" were not included in EU IP law. Before, the digital revolution, according to several recent directives the consumer

⁴⁰ Andrea Stazi and Davide Mula Intellectual Property and Consumer Law in Ana Ramalho and Christina Angelopoulos (eds), *Crossroads of Intellectual Property: Intersection of Intellectual Property & Other Fields of Law* (Intellectual Property in the 21st Century) (Nova Science Publishers, UK edn, 2012).

⁴¹ Ibid.



defines as "any natural person acting for objectives outside his trade, business, craft, or profession".⁴² But in 1991, this revised European intellectual property law began to address computer programs. Relying on a technical reasoning, nearly every digital operation involves some sort of copying; the reproduction right was expanded into the exclusive right to use works virtually. The E.C Computer Programme Directive of 1991⁴³ and Database Directive of 1996⁴⁴ codified his extremely broader understanding of the right of reproduction for the first time. The Information Society Directive of 2001⁴⁵ revised this interpretation as a general standard. Consequently, the portfolio of intellectual property rights now includes an additional right: the exclusive right to consume works electronically. As previously said, the customer acts as the user of digital works in the digital world. In any case, consumer laws cannot be applied to users in every situation because, while the user may not always be a consumer from a subjective viewpoint, consumer law must be constrained by intellectual property law due to the divergent objectives of both the laws.

The U.S. legal system has demonstrated an exception to the concerns regarding the exclusion of consumers from intellectual property (IP) discussions. This is illustrated by the first-sale doctrine, which permits the resale of copyrighted or trademarked goods after they have been introduced to the market⁴⁶; the rights of software owners to create a backup copy or modify the program; and certain fair use exemptions that have been established by the courts.⁴⁷ E.g., the "time shifting exemption"⁴⁸ In its ruling, the Supreme Court determined that the Sony Betamax video recorder sale did not constitute contributory infringement, notwithstanding the device's capability to enable the unauthorized recording of broadcast audiovisual works. The court determined that "time shifting," which involves recording a televised program for subsequent viewing, constituted fair use and thus required non-infringement.

Industrialized nations have balanced the public and private interests in IPR use by enacting comprehensive antitrust legislation. Antitrust laws may need to be adopted or revised in developing nations to ensure that abusive practices pertaining to acquiring or using intellectual property rights are controlled due to the TRIPs Agreement. Each of the Member States may be unable to fully adopt the minimal requirements established by the TRIPs Agreements into their local legislation. Therefore, various exclusions have also been created in light of the two

⁴² Article 2(1) of Directive 2011/83/EU on consumer rights, OJ L 304/64 of 22.11.2011

⁴³ Council Directive 91/250 on the legal protection of computer programs, Official Journal No. L 122 of 17 May 1991

⁴⁴ Council Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases

⁴⁵ Council Directive 2001/29/EC of the European parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Official Journal No. L 167 of 22 June 2001,10 (Information Society Directive)

⁴⁶ 17 U.S.C. § 109(a) (2000)

⁴⁷ 17 U.S.C. § 117(a) (2000)

⁴⁸ Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417, 442 (1984).



articles mentioned above, including the bolar exception⁴⁹, parallel imports⁵⁰, and compulsory licensing⁵¹. The flexibilities provided by TRIPs can be utilized to safeguard the interests of consumers.

The Consumer Protection Act, 2019 was introduced in India in response to the challenges posed by the digital age. Its most notable features include the creation of a Central Consumer Protection Authority with broad enforcement powers, coverage of e-commerce activities, electronic complaint filing, expansion of pecuniary jurisdiction, a more expansive definition of unfair trade practices, and punitive measures for deceptive advertisements. It is anticipated that the new law will safeguard the interests of and address all the concerns of modern consumers.

In 2005, India achieved complete TRIP compliance; the only issue with the implementation of TRIPs compatible provisions was the awarding of both process and product patents. This may harm a huge portion of the country's population's access to pharmaceuticals, but with the TRIPs flexibilities in place under domestic legislation, India has been attempting to meet the demands of users of protected items. In reality, when it comes to the public versus private rights issue, the Indian judiciary consistently acknowledges the interests of the consumer. Due to this, the Supreme Court of India has been under criticism from all over the world for failing to uphold the innovator community's interests in research and development.⁵²

IV. CONCLUSION

An initial examination of intellectual property may suggest that consumer protection and intellectual property are unrelated. However, a closer examination of several facets of intellectual property reveals that not only are the two not interrelated, but intellectual property laws also have a substantial impact on consumer protection. Consumers of intangible property typically have extremely few options for redress under consumer protection laws. The conventional definition of a consumer of intellectual property is excessively limited. Alvin Toffler correctly states in his book "The Third Wave" that the modern IP user is a "prosumer" or "active consumer."⁵³

⁴⁹ In patent law, the research or safe harbor exemption permits research and testing for regulatory approval, such as FDA clearance, without constituting patent infringement shortly before the patent term ends. In Canada, it's called the Bolar provision (*Roche Products v. Bolar Pharmaceutical*), while the EU follows EC Directives 2001/82/EC. India's equivalent is Section 107A of the Patent Act, which clarifies non-infringing acts.

⁵⁰ A parallel import is a non-counterfeit product imported from another country without the permission of the IP holder. This is based on Article 6 of the TRIPs Agreement, the principle of exhaustion of rights

⁵¹ Compulsory licensing allows a government or a third party to produce a patented product or process without the patent owner's consent, as permitted under the WTO's TRIPs Agreement. For details refer Compulsory licensing of pharmaceuticals and TRIPs

<https://www.wto.org/english/tratop_e/trips_e/public_health_faq_e.html> accessed on 19 Dec 2024.

⁵² Shamnad Basheer and Prashant Reddy. 'Ducking TRIPs in India: A Saga Involving Novartis and the Legality of Section 3(d)' (2008) 20 NLSIR 131. <www.jstor.org/stable/44283679> accessed 05 Dec 2024.

⁵³ A combination of the words "professional" and "consumer". Alvin Toffler *The third wave*. (New York: Morrow (1980).



However, consumer protection cannot be completely ensured by consumer protection laws alone. Proper application of consumer protection laws in conjunction with other legal areas that bear on consumer interests—intellectual property laws being one such important area that can significantly strengthen consumer protection. However, there are situations where consumer interests need to be shielded from intellectual property in both online and offline mode. In these circumstances, the nations must implement and incorporate the flexibilities of the TRIPs into their local intellectual property regimes in a way that best serves the interests of the consumers. Also, the proliferation of electronic commerce has given rise to a multitude of intricate intellectual property concerns, such as Cybersquatting, conflicts over domain names, acts of passing off, and the dilution of trademarks inside the realm of the internet.⁵⁴ However, implementing existing laws for IP in a digital world will protect consumer interests as well as country's economy.

It is not required to restrict or limit the rights of IP holders to reflect consumer interests. In a particular national and local context, it entails identifying the elements of the industrial property system that particularly benefit customers and working to improve them. It further involves the areas where industrial property rights are frequently abused and working to prevent these dishonest trade practices. For instance, actions can be done to effectively utilise the flexibilities provided by the TRIPs agreement to guarantee that consumer demands are met if a patented product in a certain nation is necessary for the general welfare of the public at large. However, if the circumstances are such that patented goods are not being sold in the market but rather counterfeit goods, the IP holder's rights need to be protected in order to ensure that consumers only purchase authentic, superior goods.

In conclusion, issues relating to intellectual property rights and consumer interests differ from jurisdiction to jurisdiction, and the approaches taken to address them rely on the political and socio-economic conditions of the host nation. So, each country, especially one in the process of development, must identify the most practical solution that correspond to its particular historical circumstances and gradual ascent.

SUGGESTION

The following strategies may be implemented to safeguard consumers against infringement of intellectual property rights:

- Improvement in legal enforcement: Strengthen existing laws and regulations by giving adequate funding, training, and assistance to law enforcement agencies and the judiciary.
- Encourage competition: Promote innovation, assist small enterprises, and stop anti-competitive behaviour to increase competition in the market.

⁵⁴ Poonam Dass, 'Conflict between Trademarks and Domain Names', (2002) XXIV DLR, 150.



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- Increase awareness: Inform customers of their rights and potential risks of purchasing fraudulent goods and downloading illegal content. They will be able to report cases of IPR abuse and make educated decisions.
 - Promote cooperation: To create successful plans for preventing IPR infringement and defending consumer interests, promote cooperation between government agencies, IPR holders, and consumer protection organizations.
 - Balanced intellectual property regulations: Create laws for intellectual property that balance consumer interests with fostering innovation.
 - Last but not least, companies and the legal system must develop best practices in Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) to enable simpler, quicker, and more efficient remedies against IP infringements, cybersquatting, domain name disputes, etc. for both online and offline consumers.