

Sri Lanka Model United Nations



World Intellectual Property Organization

Study Guide

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

Intellectual property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary, and artistic fields. Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

WIPO or World Intellectual Property Organization is the global forum for intellectual property services, policy, information and cooperation. Its mission is to promote innovation and creativity for the economic, social and cultural development of all countries, through a balanced and effective international intellectual property system.

The Convention Establishing the World Intellectual Property Organization (WIPO), concluded in Stockholm on July 14, 1967 (Article 2(viii)) provides that “intellectual property shall include rights relating to:

- literary, artistic and scientific works,
- performances of performing artists, phonograms and broadcasts,
- inventions in all fields of human endeavor,
- scientific discoveries,
- industrial designs,
- trademarks, service marks and commercial names and designations,
- protection against unfair competition,

and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”

The mandate, governing bodies and procedures of this specialized committee are set out in the WIPO Convention which established WIPO in 1976. It comprises of 191 member states which approve the committees strategic direction and activities.

THE AGENDA

Conference Topic : Discussing the current challenges faced in the field of IP and software patent protection in the digital environment.

Practice Debate Topic: Addressing counterfeiting and piracy issues.

CONFERENCE TOPIC: DISCUSSING THE CURRENT CHALLENGES FACED IN THE FIELD OF IP AND SOFTWARE PATENT PROTECTION IN THE DIGITAL ENVIRONMENT

BACKGROUND

Intellectual property (IP) rights exist to protect the works of creators and innovators from misappropriation or copying by unauthorized parties. Such protection is in the interests not only of the individual creators, but of wider economic development and consumer interests. In order to protect these rights, there are certain challenges that have to be faced. Some of the problems faced are working out how to ensure that these valuable IP rights are usable, and how to ensure that their value is preserved in the face of relentless infringement on an enormous scale.

A patent is an exclusive right granted for an invention –a product or process that provides a new way of doing something or that offers a new technical solution to a problem. Patents were created in order to encourage innovation, not kill it. They were meant to protect the inventor, not further strengthen those with power. Use of patents have now become a challenge as they have instead been used for years now in the software industry as a blunt weapon to suppress innovation, kill competition, and generate undeserved royalties.

There is little doubt that intellectual property laws have helped protect innovators, artists, writers, inventors, scientists, and countless other individuals and organizations from having their ideas stolen. However, as the world has progressed and become more interconnected, the challenges that the field of intellectual property face are significant.

CASE STUDY

Intellectual property laws are supposed to foster innovation by helping entrepreneurs make a profit off of their ideas. Allowing patents and copyrights to be used by anyone would result in the originators of ideas losing out on the opportunity to make money off those ideas, which in turn would hinder innovation. However, some economists have argued that current intellectual properties have gone too far and are actually hurting innovation. They point out that by copyrighting and patenting too many ideas, it becomes difficult for small or medium-sized businesses to afford the patent rights necessary to build on the innovations of previous inventors.

The incredible growth of the software industry has provoked increased intellectual property recognition for software inventions. Trade secret law was at one time the only option for protecting software. As technology became more widespread and software more ubiquitous, copyright protection became the norm. Now, with broad access to development tools, new programming languages, and Internet based deployment methods, there is an increasing reliance on the patent system to provide even greater protection. The issues regarding the viability of software patent protection has been an ongoing issue as it has seen more failures and complications than reaping fruitful results in the digital environment. A common criticism regarding software patents is that software is not meant to be patentable and is not an invention as defined in the Patent Act. Other critics claim that identifying software components that are novel or not obvious is difficult. Others state that the investment of time and cost is too small to warrant the quid pro quo of the monopoly granted with a patent. Still others point to the royalty and legal costs and the escalating restraints on trade to argue against the patenting of software.

POINTS TO CONSIDER

- A critique of modern intellectual property rights is that they may have become too broad in nature and not very well defined. Intellectual property, since it has to do with ideas, is by nature rather vague, yet it does have very real effects on the rights and opportunities of people and businesses.
- The viability of patenting software for a duration of 20 years

- The damage caused to FOSS (Free and Open source software) by patenting software
- IP laws fall under the jurisdiction of federal law. Article I, Section 8 of the U.S. Constitution grants Congress the power to promote innovation by ensuring creators are granted intellectual property rights through both the U.S. Copyright Office and the U.S. Patent and Trademark Office. It behooves practitioners dependent on third-party L&D materials and content to acquaint themselves with basic guidelines and act conservatively when making decisions about the creation and use of IP.
- Previous measures that have been taken to solve these challenges in the digital environment
- The Madrid System – The international Trademark System
- PCT – The international Patent System
- Legalities regarding software patenting and IP Challenges
- The possibilities of protection of software through a more feasible means
- The possibility of union collaboration in spreading awareness of the hindrance caused by software patenting
- Crucial definitions
- short term and long term solutions to eradicate these challenges
- The purpose / necessity of software patenting and IP services and how it may be utilized more effectively

FURTHER READING

https://www.ssjr.com/pubdigassets/publications/lawyer_31/Challenges%20with%20Patenting%20Software.pdf

http://eprints.rclis.org/28939/1/Intellectual%20Property%20Rights%20in%20Digital%20Environment_ISI.pdf

<https://timreview.ca/article/503>

<https://www.td.org/insights/what-are-the-legal-challenges-with-intellectual-property>

https://www.uspto.gov/sites/default/files/patents/law/comments/sw-f_mackerel_20130416.pdf

PRACTICE DEBATE TOPIC: ADDRESSING COUNTERFEITING AND PIRACY ISSUES

BACKGROUND

Counterfeiting refers to “Copy-cat” products imitating the original product. They often involve trade mark infringements and Customer deception.

According to the TRIPS Article 51, note 14(a) : “... any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation” refers to counterfeiting.

Concern about piracy and counterfeiting is growing. Research by the European Commission shows that more than 100 million counterfeit products are seized every year in the EU alone. A significant portion of the counterfeit products come from China (64%), but other countries like the United Arab Emirates (Abu Dhabi and Dubai) and Taiwan are also creating unprecedented flows of counterfeit products. Counterfeit products are flooding the markets and also stimulate unwanted parallel imports, not only harming businesses but also consumers.

“Piracy” Refers to Copies made without the right holder’s consent. This often involves copyright infringements. However, the Customer is not deceived and is often aware that the goods are pirated

According to TRIPS Article 51, note 14(b): “... any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation” refers to Piracy.

Currently a major unaddressed issue in many countries, Piracy and Counterfeiting are said to become rampant in the foreseeable future. The IP rights provide certain protection against these illegalities.

CASE STUDY

We live in a world in which counterfeiting, plagiarism and piracy are on the increase. A world in which products are unlawfully imitated, trademarks and designs are infringed, copyright is violated and music is downloaded illegally. Intellectual Property rights are infringed in more and more territories worldwide. The need for brand protection and anti-counterfeiting has therefore never been as urgent as it is now. It has long been known that counterfeiting and piracy (respectively the infringement of trademarks and copyright, together known as intellectual property, or IP) make up a vast global business. But a report published on April 18th by the OECD suggests that, despite the advent of such high-tech counter-measures, it is far bigger than previously thought. The last such survey by the club of 34 mostly rich countries was in 2008. Updated the next year with data from 2007, it put the value of cross-border trade in fakes at \$250 billion, or 1.8% of the total for all goods. The latest report estimates that by 2013 those figures had risen to \$461 billion, and 2.5%.

Counterfeiting and piracy cover an immense gamut: from synthetic cinnamon to fake Louis Vuitton luggage to copies of the world's most elaborately programmed computer software. Some manufacturers and distributors are out-and-out hoodlums: investigations in America, Canada and Sweden have linked biker gangs to counterfeit medicines, notably drugs used to treat erectile dysfunction. Others are guileful entrepreneurs who would doubtless shrink from other areas of organised crime. A Chinese woman accused of selling bogus branded luxury goods worth millions of dollars was found last year to be living in a quiet Californian suburb, studying for a university degree.

Globalisation has enabled traffickers to run rings round officialdom, says Candice Li, vice-president of the International Anti-Counterfeiting Coalition (IACC), a lobby group. "There isn't an international legal or enforcement framework with which to confront the problem," she says. Counterfeiters can make parts in one country, assemble a product in a second and package it in a third—without stepping outside the law in any of them.

Establishing the origins of internationally traded counterfeit or pirated goods is not easy. Distributors go to great lengths to zig-zag around the world. A consignment of counterfeit versions of Avastin, a cancer drug, found in America in 2012 had travelled through Turkey, Switzerland, Denmark and Britain. Free-trade zones are particularly favoured as transit points—as are poorly governed or war-torn countries. Afghanistan, Syria and Yemen are all leading countries of provenance.

POINTS TO CONSIDER

1. The Economic and social impact of counterfeiting and Piracy
2. The viability of enforcement of greater trademark and copyright laws and regulations in avoiding piracy and counterfeiting
3. Government steps taken to eradicate counterfeiting and piracy
4. Previous and ongoing piracy and counterfeiting issues
5. Solutions to negate 'fakes' from online platforms
6. Steps intermediaries can take to help eliminate global supply chain vulnerabilities that allow infiltration of counterfeit and pirated products
7. Measures that maritime operators can take to prevent maritime transportation of counterfeit goods
8. Policy and legislative changes that need to be implemented

FURTHER READING

<http://apps.who.int/medicinedocs/documents/s19845en/s19845en.pdf>

<https://www.economist.com/news/international/21697218-china-grew-richer-and-more-innovative-people-assumed-it-would-counterfeit-less-think>

http://www.wipo.int/edocs/mdocs/aspac/en/wipo_ip_nan_10/wipo_ip_nan_10_ref_t8.pdf