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## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **IPR ENFORCEMENT: STRATEGIES AND CHALLENGES IN DIFFERENT JURISDICTIONS**

AUTHORED BY - SURYANSH MISHRA

## **Abstract**

It is noteworthy that today's economic growth worldwide is based on the premise of Intellectual Property Rights (IPR). However, the realization of these rights entails a rather challenging question of enforcement that is a reverse of an equally complicated multifaceted phenomenon, which differs considerably across legal systems. The approaches and issues relating to the enforcement of IPR in United States, European Union, China and India are discussed in this article.

This paper analyzes various enforcement procedures used in each jurisdiction; civil actions, statutorily created courts, administrative actions, criminal proceedings, and online enforcement regimes. It also explores some of the issues affecting these countries including expensive litigation, slow and complicated legal system, piracy, and the issue of reconciliation of IP rights with other interest.

This comparative overview identifies the main strands: the dichotomy between harmonisation and fragmentation, and the differences in administrative and judicial models. This article further perceives IPR enforcement as a positive force for encouraging innovations, creativity and economic growth but at the same time, the article challenges the policymakers to find the right balance, appropriate equivalence between substantial IP rights protection measures and other societal values.

Based on the analysis of current trends and challenges in the globalising knowledge- and technology-intensive economy, the article concludes that IPR enforcement will remain a critically essential and relevant issue and need constant attention to achieve internationalization of standards, enhance international cooperation, and devise new strategies for combating the emerging and evolving issues.

**Keywords**

Intellectual Property Rights (IPR), Enforcement, Jurisdiction, Litigation, Patent, Copyright, Trademark, Infringement, Harmonization, Innovation

**Introduction**

Intellectual Property Rights (IPR) are mainly the foundation of innovation, creation, and growth of the contemporary world economy. These rights, and which include patents, trademarks, copy rights, and trade secrets entitle the holders of such products with monopoly rights with intentions of encouraging more innovation and creativity. However, the protection of these rights poses a multi-faceted problem that requires distinction across the different jurisdictions. Therefore, the purpose of this article is to discuss not only the effective and ineffective practices of IPR enforcement in the countries under analysis but also the distinctive features of the approaches and problems in different systems.

It is worth noting that the effectiveness of enforcement of IPR is of great benefits. While securing the legally recognized interests of creators and inventors it remains an important support of economic, technological, and cultural progress. Yet, the fast-evolving technology environment, a shift to the digital economy, and the globalization of trade have presented new opportunities and threats for IPR, which have put jurisdictions under pressure to update their models and legislation.

**IPR Enforcement in the United States****Strategies**

The United States is amongst the nations with effectively developed and wide-spread IPR enforcement systems. At the heart of this system are two key institutions: The two principal agencies that guard the IP system in the United States of America are the U.S. Patent and Trademark Office and the U.S Copyright Office. These agencies have important duties of facilitating registration and protection of intellectual property rights.

1. **Civil Litigation:** The main way of enforcing these IPRs in the U.S is through civil action. Rights holders can seek various remedies through the court system, including:
  - a. Mandatory relief to prevent further violation
  - b. Monetary damages for loss of use or of the use of related property, of services, or of other conveyances.

- c. Pecuniary presumptions in or about actions for infringement of copyright
- d. Additional damages in case of willful infringement
- e. Respondents to pay reasonable attorney's fees in the exceptional cases.

The United States legal system provides many discovery procedures, which would give the rights holders every chance to collect the evidence necessary to back up claims. This can be very useful in numerous matters where proving infringement of an IP might be quite a challenge.

2. Specialized Courts: The U.S. has developed its separate courts for addressing the IP issues, especially the most famous one, the Court of Appeals for the Federal Circuit (CAFC). The CAFC is vested with appellate jurisdiction on patent appeals and federates consistency in every circuit regarding matters of patents. Another advantage of such a specialization is the preparation of specialization for individual technical and legal issues in patents.
3. Administrative Measures: Other than judicial measures, the U.S uses administrative mechanisms of IPR protection as follows.
  - a. The International Trade Commission (ITC) can seek to investigate unreasonable imports, and this includes IP infringement. In accordance with the statute, the ITC has exclusion orders powers that require that infringing goods should not be imported to the United States of America.
  - b. Customs and Border Protection Agency of the United States tries to seize infringing products at the border.
4. Criminal Enforcement: Criminal enforcement of IPR violations is the docket of the Department of Justice or DOJ. This includes prosecuting cases involving:
  - a. Large-scale copyright piracy
  - b. Trademark counterfeiting
  - c. Trade secret theft Criminal penalties include fines and /or imprisonment This acts as a powerful deterrent to anybody willing to infringe on IPR.
5. Online Enforcement: The online copyright infringement is covered by the Digital Millennium Copyright Act, also referred to as the DMCA. It contains a notice-and-takedown process through which rights holders can demand that the Listed Sites take down content that allegedly has been pirated.

## Challenges

Despite its robust framework, the U.S. faces several challenges in IPR enforcement:

1. High Litigation Costs: The cost of IP litigation in the U.S. is one of the highest all over the world. The AIPLA also noted that the median expense of a patent infringement action where the potential payout ranges from \$1 - \$25 million is \$2.5 million up to trial. This can be economically unfeasible for SMBs and individual creators, and too often their IP rights remain poorly protected.
2. Lengthy Legal Processes: IP cases, including cases dealing with patents are known to drag on for several years. This may take a relatively long time which can be disadvantageous to the rights holders especially where the value of the IP property declines with every new sunrise.
3. Patent Trolls: The U.S. has again dealt with the matter of the actual 'patent trolls or non-practicing entities' such as NPEs getting patents for only one purpose of demanding licensing fees or settlements from the actual infringers. Patent assertion entities also remain a worry despite recent Supreme Court decisions that have made it hard for them to work.
4. Digital Piracy: There's no doubt in saying that digital technology has also contributed to a higher incidence of copyright infringement. Thus, however, the Democratic Commons on the Internet is an essential provider of outlawed reproduction of distinctive merchandise, critics are saying that the DMCA doesn't go far enough as a policy for assisting rights holders in the new digital world.
5. Balancing Interests: As mentioned above, there is always a conflict between users' rights and interests and property rights and interests in a specific subject matter, including its protection and use by third parties for purposes of innovation, exercise of freedom of speech and audiences' – the right to information. These tensions are especially illustrated in the cases concerning free use in copyright legislation and the legal protection of computer programs and business techniques.

## **IPR Enforcement in the European Union**

### **Strategies**

The EU member states have paid a lot of efforts into aligning the IPR enforcement in all its members, thus creating a harmonised approach to IP rights. Key elements of the EU's strategy include:

1. Harmonized Legal Framework: In order to build a common legal framework for member states several directives and regulations have been put in place by the EU for IP enforcement. These include:

- a. Civil enforcement measures are recast by the Enforcement Directive 2004/48/EC.
  - b. The regulation's notation is ended at Regulation (EU) No 608/ 2013, which deals with the customs measures for action against goods which are believed to be violating the IP rights.
2. Unified Patent System: For a long time now, the EU has been struggling to establish the Unified Patent Court (UPC) system which would allow the formation of one judicial body as the court of first instance having jurisdiction over virtually all European patents. When completely set up, this technique will eliminate the inefficiencies of patent litigation in as many EU member nations as may choose to be a part of the system.
3. European Institutions: There are still numerous EU-level establishments that are vital to the enforcement of IPRs:
  - a. Grants European patents to inventors across Europe, the European Patent Office
  - b. A European Union Intellectual Property Office known as EUIPO is responsible for the administration of EU trademarks and registered Community designs.
  - c. Europol help with the investigation and prosecution of IP crimes
4. Border Measures: I have established that through the customs authorities, the EU has ensured it is enforcing IPR at the external borders of the EU. Rights holders can send applications for customs measures, enabling authorities to seize the rather suspected products.
5. Criminal Enforcement: Criminal law is still primarily a matter for national legislation, but as we have seen the EU has started to seek the harmonisation of criminal enforcement of IPR most notably through directive 2004/48/EC which mandates members states to ensure that criminal sanctions shall be provided for person guilty of willful affront to a trademark or copyright especially if the act is being done for commercial gain.

## Challenges

Despite these strategies, the EU faces several challenges in IPR enforcement:

1. Fragmentation: Even in today's world where each nation is trying to adopt the others and make standard procedures alongside the laws similar, there are differences. This will result in the variation of the degree of enforcement across the member states and open the door for what is called forum shopping by those that have infringed on the rights of inventors.

2. Jurisdictional Complexities: The extraterritoriality of so many IP infringements in the EU can give rise to jurisdictional disputes. It might be sometimes tricky to understand which country's courts have the kudos and which laws are to be applied.
3. Digital Single Market: The contemporary EU's quest for a Digital Single Market has introduced new phenomena of IP protection that extend new types of challenges to IP enforcement, especially where they conflict with the free movement of goods and services across the EU.
4. Data Protection and Privacy: EU enjoys tough data protection laws; for instance, the General Data Protection Regulation (GDPR), which borders on the enforcement of IASs at times. Features of the GDPR such as limitations on data processing also limit the ability to find and target online infringers to a degree.
5. Varying Enforcement Levels: Even though the legal solutions are unified in the member state, the stringency and efficiency of enforcement may significantly differ under the influence of the qualitative discrepancies in terms of power, know-how and priority.

## **IPR Enforcement in China**

### **Strategies**

Author believes that in recent years China has all needed efforts to build stronger IPR enforcement system not only to meet its domestic requirements, but also due to global pressuring. Key strategies include:

1. Specialized IP Courts: China have recently set up IP courts, which exist across large cities such as Beijing, Shanghai, and Guangzhou. These courts deal with complicated IP disputes and have assisted in rationalizing and enhancing the quality of the IP decisions.
2. Administrative Enforcement: China's administrative enforcement is the most dominant method when it comes to the protection of IPRs. The governmental institutions empowered with investigations about IP infringements and the authority to bring an administrative punishment include the State Administration for Market Regulation (SAMR), and the National Copyright Administration of China (NCAC).
3. Customs Measures: It is worth stating that Chinese customs act as an actual party searching for IPR infringements at the border. It is possible for the rights holders to occur with customs, so that they can be able to enforce their registered IP rights.

4. Criminal Enforcement: China has increased its criminal litigation efforts against IP rights adding lower addends for criminal responsibility per IP case and escalate penalties for infringement.
5. Internet Courts: Several cities in China have set up internet courts for the purpose of dealing with internet-connected IP cases. These courts are aware of Technology Assisted Litigation, and they apply it in the handling of their cases.
6. "Double High" Strategy: The Chinese strategy currently is the Double High which is a HIM strategy that targets high-value patents as well as high-quality enforcement. This comprises efforts headed toward increasing demand for top quality patents and increasing protection of valuable patents.

### Challenges

Despite these efforts, China continues to face significant challenges in IPR enforcement:

1. Scale of Infringement: The level of IP infringement in China, especially in Counterfeit and piracy products has remained high. The enormity of the country and its industrial base complicates implementation as does the sheer scale of the land.
2. Local Protectionism: Local governments may cover local companies involved in IPR infringement for example where such companies are major stakeholders in the local economy. This can in turn hamper enforcement, particularly of foreign rights holders' rights.
3. Transparency and Consistency: Certain aspects of enforcement and some of the points of oscillations in applying the IP legislation across various regions of China may be not very transparent, which adds uncertainties to the rights holders.
4. Challenges for Foreign Companies: Foreign companies have other challenges in protecting their IPR in China; language and cultural restrictions, lack of understanding of the Chinese legal system, and perceived prejudice against foreign properties, normally encountered in the Chinese legal system.
5. Online Infringement: It asserts that with the fast development of e-business in China nowadays, there appear new issues concerning protection against online infringement of IP rights. With the likes of Alibaba in place, though they have seemed to put measures in place to curb counterfeiting it is still rife.
6. Trade Secret Protection: Even though China has revised its laws to strengthen protection of trade secrets in the recent years, there are still issues which make it

difficult to enforce trade secret protection in China such as the problems in the collection of evidence and high standard of proof.

## **IPR Enforcement in India**

### **Strategies**

Nevertheless, due to the scarcity of resources and multiple priorities, India shares common problems of many developing countries in the enforcement of IPRs. However, India has implemented several strategies to improve its IP system:

1. Strengthening Legal Frameworks: India has brought changes in its IP laws every now and then to meet with international IP laws either in terms of fulfilling TRIPS Agreement or the bilateral trade agreements. The country has also had the opportunity to develop specialized IP tribunals and courts for the purpose of better IP dispute resolution.
2. Capacity Building: An analysis of IPR enforcement measures in India aims at strengthening of judicial and executive capacities such as training of judges, customs and police officers on IP matters.
3. Public Awareness Campaigns: India has used public awareness campaigns in a bid to provide important information to businesses and the public on the issue of infringement of IP rights.
4. Coordination Agencies: India has created departments including Cell for IPR Promotion and Management (CIPAM) working under the Department for Promotion of Industry and Internal Trade (DPIIT) to oversee and facilitate IP policies and actions.
5. International Cooperation: India also enters into international cooperation programs involving IP systems enhancement, sometimes with the assistance of WIPO or developed country IP offices.

### **Challenges**

Despite these efforts, India faces several challenges in IPR enforcement:

1. Resource Constraints: Primary for many countries, scarcity of financial and human capital works against proper IPR implementations. This can translate into a lack of enforcement agencies to arrest the rot and insufficient funding to equip an existing but understaffed agency with the necessary tools including technology.
2. Balancing Development Priorities: It gives India an understanding of how much it can protect IPR together with other development needs that it has such as health, education

or poverty eradication. This can create problems, especially in such field as pharmaceutical patents.

3. Weak Institutional Capacity: India faces a problem of low IIP or institutional inefficiency when it comes to judicial systems and agencies involved in the implementation of IPR.
4. Informal Economy: A large and vibrant informal economy in India can hamper the process of implementing the IPR because most of the economic activity in such country would not be legal.
5. Technology Transfer: The conflict between the development of technology transfer and innovation, on one hand, and the conservation of IPRs, specifically in strategic sectors, on the other, is an apparent one.
6. International Pressure: Developed countries and MNCs exert continual pressure on India to augment its IP schemes, although these plans posse clear conflicts with certain developmental policy objectives or public sentiment.

## Comparative Analysis

### Harmonization vs. Fragmentation

The comparison of IPR enforcement strategies across different jurisdictions highlights the tension between harmonization and fragmentation:

- The EU has gone a long way in achieving harmonization but it is difficult to do away with national distinctive features.
- The police system in the U.S., though more centralized, is also federal and hence complicated because of more often than not intricate legal procedures.
- The needs and development priorities of a country sometimes prove difficult for developing nations to integrate into their IP systems to meet regional and global standards.

### Administrative vs. Judicial Enforcement

Different jurisdictions vary in their reliance on administrative versus judicial enforcement:

- China gives great importance to administrative enforcement, while it can be quicker and more versatile than judicial decisions, it is less effective in terms of dissuasion.
- The U.S. and the EU depend on judicial enforcement that offers elaborate case law and effective remedies but at the same time is more time-consuming and expensive.

- It should be noted that the countries of the third world use both administrative and judicial actions depending on the institutional structures and legal systems.

### **Balancing Rights and Interests**

All jurisdictions grapple with balancing IP protection against other societal interests:

- The U.S. continues to experience the controversies in sections, 42 and 43 of copyright and what constitutes fair use and the controversies in the section 98 of patents and trademark act on protection of patents on software and business methods.
- EU has to uphold both robust IP rights on one hand and, on the other hand, free movement of goods and services in the internal market.
- China aims at enhancing protecting IP while the country supports indigenous innovations and technology transfer as well.
- Knowledge and technology are considered more important than especially fierce IP protection in developing countries; such goods as medicines and educational materials are the most common examples.

### **Conclusion**

The enforcement of Intellectual Property Rights (IPR) remains an abstract and a dynamic issue with the approach that sharply differs in the territories in consideration. There are some recurring features: the desire for a civil remedies' regime, border measures, and criminal sanctions for the most egregious violations; but the strategies, and their obstacles, depend on the legal frameworks, economic aims, and administrative and bureaucratic resources of each country.

The U.S and the EU have well developed IP procedures with stringent measures to protect IPRs, however there are challenges that include high cost of litigation; complex IP laws; the need to possibly shift IP laws to accommodate advance technologies among others. China has improved its IP system however problems of regional barriers and size of piracy remain a concern. It is always a tough job for developing countries to manage scarce resources and at the same time to protect IP and other development objectives.

Thus, we foresee that as the global economy shifts to knowledge-based and the digital economy, IPR enforcement will continue to assume critical prominence. Accordingly, further

attempts will have to be made at integrating the respective international standards, enhancing international collaboration, and inventing new enforcement approaches to address new challenges which are most likely to arise in the digital environment.

Policymakers need to bear in mind that while assertive, and comprehensive IP protection is desirable, this must be exercised in equal measure with an appreciation of the necessity to protect other important societal values like the promotion of innovation, access to knowledge and essential technologies, consumer protection and privacy among others. Taking this balance will be important in ensuring that IP systems continue to perform this core function effectively especially in the current millennium and in the future.

### References

1. Gervais, D. (2008). *The TRIPS Agreement: Drafting History and Analysis*. Sweet & Maxwell.
2. Lemley, M. A. (2005). Property, Intellectual Property, and Free Riding. *Texas Law Review*, 83(2), 1031-1054.
3. Merges, R. P. (2000). *Justifying Intellectual Property*. Harvard University Press.
4. Yu, P. K. (2019). *Intellectual Property and Global Inequality: The Crisis of the Multilateral Trade System*. Cambridge University Press.
5. World Intellectual Property Organization (WIPO). (2021). *World Intellectual Property Indicators 2021*. WIPO.
6. American Intellectual Property Law Association (AIPLA). (2021). *Report of the Economic Survey*. AIPLA.
7. European Commission. (2004). Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights. *Official Journal of the European Union*.
8. European Commission. (2013). Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights. *Official Journal of the European Union*.
9. U.S. Customs and Border Protection. (2021). *Intellectual Property Rights*. U.S. Customs and Border Protection.
10. U.S. Department of Justice. (2021). *Intellectual Property*. U.S. Department of Justice.
11. U.S. International Trade Commission. (2021). *Section 337 Investigations*. U.S. International Trade Commission.

12. European Patent Office (EPO). (2021). Annual Report 2020. EPO.
13. European Union Intellectual Property Office (EUIPO). (2021). Annual Report 2020. EUIPO.
14. Europol. (2021). Intellectual Property Crime. Europol.
15. China National Intellectual Property Administration (CNIPA). (2021). Annual Report on Intellectual Property Development in China. CNIPA.
16. State Administration for Market Regulation (SAMR). (2021). Intellectual Property Protection in China. SAMR.
17. National Copyright Administration of China (NCAC). (2021). Annual Report on Copyright Protection in China. NCAC.
18. Indian Patent Office. (2021). Annual Report 2020-2021. Indian Patent Office.
19. Cell for IPR Promotion and Management (CIPAM). (2021). IP Awareness Campaigns. CIPAM.
20. World Intellectual Property Organization (WIPO). (2021). Global Innovation Index 2021. WIPO.

