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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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THE JUSTIFICATION FOR INTELLECTUAL PROPERTY RIGHTS

AUTHORED BY - MAKAM GANESH KUMAR

Abstract

Modern societies rely heavily on intellectual property rights (IPRs) to foster innovation, creativity, and economic growth. Examining multiple ethical, economic, and societal perspectives, this paper seeks to provide a comprehensive study of the justification for intellectual property rights. This paper seeks to demonstrate the significance and legitimacy of IPRs in promoting innovation, encouraging investment, and protecting the rights of creators by examining their underlying principles and key arguments. This paper seeks to provide a comprehensive understanding of the significance and legitimacy of intellectual property rights by examining their moral, economic, and social justifications. It emphasises the need for a balanced approach that promotes innovation, encourages creativity, and guarantees access to knowledge and cultural expression. As societies continue to evolve in the digital age, ongoing dialogue and examination of IPRs will be essential for shaping a dynamic and equitable intellectual property environment. This is be a Expository paper.

Introduction

Intellectual property rights (IPRs) are legal protections granted to individuals or organizations for their creations or inventions. These rights encompass various forms of intellectual property, such as patents, copyrights, trademarks, and trade secrets¹. The scope of IPRs extends to a wide range of fields, including technology, literature, art, music, inventions, and brand identities.

The importance of IPRs in modern society cannot be overstated. These rights serve as incentives for innovation and creativity by providing creators and inventors with the exclusive rights to control and benefit from their intellectual endeavours. IPRs enable individuals and organizations to reap the

¹ World Intellectual Property Organization (WIPO). (n.d.). What is Intellectual Property? Retrieved from <https://www.wipo.int/about-ip/en/>

rewards of their investments in research, development, and artistic expression. Additionally, IPRs facilitate economic growth by fostering a conducive environment for businesses to invest in new technologies and develop competitive advantages².

Moreover, IPRs play a critical role in protecting the rights of creators and inventors. They safeguard their moral and economic interests by preventing unauthorized use, reproduction, or distribution of their works or inventions. This protection ensures that creators have the ability to control the use of their creations and receive appropriate recognition and remuneration³.

The justification for intellectual property rights is a subject of ongoing debate and analysis from various perspectives, including ethical, economic, and societal standpoints. Understanding the underlying principles and arguments surrounding IPRs is essential for appreciating their significance in promoting innovation, encouraging investment, and safeguarding the rights of creators.

Theories on intellectual property

several key theories proposed to elucidate the theoretical foundations of intellectual property, offering valuable insights into its ethical, economic, and philosophical dimensions.

- The Theory of Natural Rights

The primary justification for this theory is that everyone has the right to regard their ideas as natural property rights because the creation is the result of the creator's effort, originality, and creativity. The central tenet of this theory is the famous philosopher John Locke's notion that an author has a natural right to his intellectual work. In this regard, there is no distinction between intellectual property and traditional tangible property, nor between the rights of the owners of these two types of property, such as the right to enjoy the property, the right to restrict others from using it, and the right to transfer ownership.

² World Intellectual Property Organization (WIPO). (2015). Intellectual Property and Economic Growth. Retrieved from https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

³ World Intellectual Property Organization (WIPO). (n.d.). The Importance of Intellectual Property Rights. Retrieved from <https://www.wipo.int/about-ip/en/iprm/index.html>

Criticisms: This theory does not address the temporal limitation of intellectual property rights. The use of intellectual property rights is time-limited, meaning that after a certain period of time, the protected objects will become public domain. The Lockean theory, on the other hand, posits perpetual ownership of tangible property.

The Lockean Proviso prohibits an inventor from possessing an abstract idea that can influence subsequent inventors. Example: if a person is granted the right to ownership over the original concept of preparing pulpy orange juice, the remaining innovators will have limited scope for discovery in the same field, preventing them from inventing a new method for extracting pulpy orange juice. This property right violates the Lockean principle of equity and creative liberty.

According to this theory, an appropriator cannot capture all of the world's natural resources. For example, if someone obtains ownership of his idea for producing milk from soybeans, he will corner the entire market for producing soymilk. So, according to Lockean thought, innovators cannot conquer the global market with their abstract ideas⁴.

- The Utilitarian and Incentive Theory

This theory was championed by the great economists Bentham and Mill with the goal of making all policies universal in the sense of achieving the greatest good for the greatest number of people. This theory's central premise is that industrial progress and cultural goods can have a positive and significant economic impact on society. Therefore, to fulfil the need for promoting inventions and creations, there should be minimal certification that the result will be superior to the costs incurred for the work. As the name implies, the incentive theory justifies the obligation of society to respect innovators and their right to property because it benefits the entire society.

Criticism: The primary criticism of this theory is that the utility gains from the impetus of a unique innovation are offset by the losses caused by exclusive ownership. Thus, the question arises as to whether or not the benefits of IPR can be weighed against the losses.[2]⁵

⁴ Balew Mersha & Kashay Debesu, Theories of Intellectual Property (2012), <https://www.abysinnialaw.com/online-resources/study-on-line/item/468-theories-of-intellectual-property>.

⁵ Peter S. Menzel, INTELLECTUAL PROPERTY: GENERAL THEORIES

- The Social Planning Theory

In this theory, intellectual property rights are viewed as an integral part of general property laws, and they must be cultivated to achieve a just and appealing culture.

Criticism: This approach is almost identical to the utilitarian theory in orientation, but dissimilar in its willingness to dispose of a perception of a desirable society that is more robust than the utilitarian conception of social welfare⁶.

- The Ethical and Reward Theory

This theory provides a moral and ethical justification for intellectual property's exclusive rights. The concept of ethics necessitates a fair and proportional contribution on the part of the creator or innovator who has invented something for the benefit of society. In this context, intellectual property rights are viewed as "an expression of acknowledgement and indebtedness to an author for doing more than society expects or feels they are required to do." With this award of legal rights, others are prohibited from utilising the work or the methodology in specific ways when the work is publicly accessible. On this view, the reward theory justifies patents, copyright works, and designs, but trade secrets are not protected because the dissemination of information to the public is restricted.

Criticism: However, this theory posits that the innovator can obtain the benefits of such a right in the early years, although this theory also questions whether innovators deserve the same right. Another disadvantage of this theory is its inability to protect traditional knowledge, as the ancient indigenous communities were not compensated for their rare invention of traditional methods and art. The full reward would go to the person who registered a patent based on traditional knowledge, not the original holders of the knowledge⁷.

- The Personhood Theory

Kant and Hegel, the greatest philosophers of all time, are the most profound proponents of the

⁶ UKEssays. November 2018. The Theories Of Intellectual Property Philosophy Essay. [online]. Available from: <https://www.ukessays.com/essays/philosophy/the-theories-of-intellectual-property-philosophy-essay.php?vref=1>

⁷ Lionel Bently, Brad Shearman, Dev Gangjee & Philip Johnson, Intellectual Property Law (2008)

theory that intellectual property rights permit and protect the development of the personality, which extends to material objects. According to this theory, everyone's personality develops in an environment of work, innovation, ideas, and creation. Personality enhancement is deeply rooted in our property rights. Under this theory, personality and property law are compared in the field of copyright (because, in the same way that tangible assets are protected, creative artistic works are viewed as assets and are also protected). Locke's labour theory and Hegel's personality or spiritual theory appear incompatible, as Locke's theory views property as serving personality, whereas Hegel's theory views property as the apotheosis of personality.

Criticism: When a work is complete, it is independent of its creator but dependent on the public domain. In actuality, the creation or work acquires significance because others accord it significance⁸.

- Moral Desert Theory

According to Locke, "every man has a property in his own person," meaning that the fruits of an individual's labour are his alone. The same pattern applies to intellectual property rights, as the innovator deserves the right due to his mental and physical labour. This theory compensates a worker's performance for "effort, ability, persistence, industriousness, luck, time spent, the difficulty, danger of the work, and leadership" etc. However, this does not provide any absolute value for the work, such as its "inherent worth" or a "just price" for labour.

Criticism: Although Legget has pointed out that even if we grant an exclusive right to a particular idea, there is no way to be certain or assume that someone else did not inculcate the same idea or thought. Thus, these rights can only be vindicated if they are applied in a manner that protects individual rights without violating the rights of others⁹.

- Economic Theory

The economic theory of intellectual property rights is directly proportional to its market value. For intellectual property, an incentive must be created to counteract losses and market failure, as

⁸ Hegel's Philosophy of Right para 51

⁹ Garima Gupta & Avih Rastogi, Intellectual Property Rights: Theory & Indian Practice (2002).

innovators consistently lose a substantial amount of money due to the high initial creation costs and marginal distribution costs of their products.

Criticism: This theory's opposing viewpoint is that there is no particular reason to believe that only property rights can generate this incentive. Frequently, the innovators are not the true owners of the property rights, and even after providing incentives, the question of how much incentive is sufficient to secure the property rights remains. As far as the tangible property is concerned, it is argued that property laws are used to allot limited resources in the competitive market and without proper safeguard of property rights, suppliers would not supply to the market even if there is chance to obtain high profits. This criticism is based on free rider principle, which says opportunists should not be allowed to derive gains from where they have not sown i.e. contributed, otherwise it would create undesirable monopolies. This is the only reason why intellectual property monopolies have limited durations¹⁰.

Ethical and Moral Justifications for IPRs

The ethical justifications for intellectual property rights (IPRs) are grounded in various philosophical and moral theories that seek to recognize and protect the rights of creators and inventors. These justifications provide a foundation for understanding the moral and ethical considerations underlying the granting of exclusive rights over intellectual creations.

One prominent ethical justification is rooted in natural rights theory, particularly the Lockean justification¹¹. According to this view, individuals have a natural right to the fruits of their labor, including the ideas and creations they produce through their intellectual efforts. IPRs are seen as a means to protect and reward the labor of creators, providing them with a legal framework to control the use and exploitation of their works. By recognizing and upholding these rights, society acknowledges the inherent value of creativity and encourages individuals to engage in innovative endeavours.

¹⁰ Mikhalien du Bois, *Justificatory Theories for Intellectual Property Viewed through the Constitutional Prism* (2018), PER/PELJ

¹¹ Locke, J. (1690). *Two Treatises of Government*.

Another ethical justification for IPRs lies in the principle of incentivizing creativity¹². By granting exclusive rights, IPRs serve as an incentive for creators to invest their time, resources, and efforts into developing new ideas and works. The promise of exclusive rights, including the ability to monetize their creations, encourages individuals to take risks and engage in innovative activities, benefiting both the creators and society as a whole.

Moreover, the ethical justifications for IPRs extend to the recognition of moral rights¹³. Creators are seen as having an inherent moral claim to control and protect their works as an extension of their personal identity and expression. IPRs, through mechanisms such as copyright and moral rights provisions, safeguard the integrity of works and ensure that creators' rights to attribution and integrity are respected.

Furthermore, intellectual property rights are often justified on the basis of protecting human dignity and cultural expression¹⁴. Recognizing the rights of creators and providing legal protection for their works acknowledges the value and significance of cultural diversity, artistic expression, and the preservation of heritage. IPRs contribute to the flourishing of diverse cultures by creating an environment where creators can freely express their ideas without fear of misappropriation or exploitation.

The ethical and moral justifications for intellectual property rights stem from natural rights, labour theory, moral rights, and the protection of human dignity and cultural expression. These justifications affirm the rights of creators to control and profit from their intellectual creations, while also acknowledging the broader social benefits of encouraging innovation, creativity, and cultural diversity. IPRs provide a framework for encouraging and protecting the contributions of creators by upholding ethical principles, thereby fostering a more vibrant and inclusive society.

¹² Machlup, F., & Penrose, E. (1950). The Patent Controversy in the Nineteenth Century. *The Journal of Economic History*, 10(1), 1-29.

¹³ Hughes, J. (1988). The Philosophy of Intellectual Property. *Georgetown Law Journal*, 77(2), 287-366.

¹⁴ Drahos, P. (2002). *A Philosophy of Intellectual Property*. Dartmouth Publishing Company Limited.

Economic Justifications for IPRs

The economic justifications for intellectual property rights are grounded in the belief that IPRs promote innovation, encourage investment in research and development (R&D), create economic incentives for creators and inventors, and facilitate market competition and consumer choice.

One of the key economic justifications for IPRs is their role in promoting innovation and progress. By granting exclusive rights to creators and inventors, IPRs provide them with the opportunity to monetize their innovations and recoup their investments. This economic incentive encourages individuals and organizations to engage in R&D activities, knowing that they can potentially gain a competitive advantage and reap financial rewards by protecting their intellectual property¹⁵. Empirical studies have shown that stronger IPR regimes are associated with higher levels of innovation and technological progress¹⁶.

IPRs also play a crucial role in encouraging investments in R&D. Companies and individuals are more likely to allocate resources to research and development when they have confidence that they can protect and profit from their discoveries. The prospect of obtaining exclusive rights to a new invention or technological advancement creates a competitive market advantage, motivating entities to invest in the development and commercialization of new ideas.

Economic incentives are at the core of IPRs, providing creators and inventors with a reward for their efforts. By granting exclusive rights, IPRs enable creators to monetize their works through licensing agreements, sales, or other forms of commercialization. This ability to generate income from their creations not only compensates creators for their investments but also serves as an incentive for future innovative activities¹⁷. It encourages individuals to allocate their time and resources towards creative endeavours, resulting in a dynamic and vibrant marketplace of ideas.

Furthermore, IPRs contribute to market competition and consumer choice. By granting exclusive

¹⁵ Maskus, K. E. (2000). Intellectual property rights in the global economy. Institute for International Economics.

¹⁶ Park, W. G., & Ginarte, J. C. (1997). Intellectual property rights and economic growth. *Contemporary Economic Policy*, 15(3), 51-61.

¹⁷ Landes, W. M., & Posner, R. A. (2003). *The economic structure of intellectual property law*. Harvard University Press.

rights to creators for a limited period, IPRs strike a balance between rewarding innovation and fostering competition. The temporary monopolies granted through IPRs incentivize competitors to develop alternative products and technologies, spurring further innovation and providing consumers with a wider range of options. The existence of IPRs creates an environment where competition is based on the quality and novelty of ideas rather than the ability to copy or imitate existing works. the economic justifications for intellectual property rights underscore their role in promoting innovation, encouraging investments in R&D, creating economic incentives for creators and inventors, and facilitating market competition and consumer choice. By providing a framework that rewards innovation and protects intellectual creations, IPRs contribute to economic growth, technological progress, and a thriving marketplace of ideas.

Social Justifications for IPRs

Intellectual property rights (IPRs) have significant social justifications that extend beyond economic considerations. These justifications revolve around ensuring access to information and knowledge, balancing public and private interests, promoting fair competition, and fostering cultural diversity and preservation.

One of the key social justifications for IPRs is their role in ensuring access to information and knowledge. By granting exclusive rights to creators and inventors, IPRs incentivize them to disclose and share their inventions, creations, and discoveries with the public. This leads to the dissemination of knowledge and fosters a culture of innovation and progress¹⁸. IPRs provide a mechanism for creators to control and license the use of their works, thereby facilitating access while preserving the integrity and quality of the information or knowledge being shared¹⁹.

Balancing public and private interests is another essential social justification for IPRs. While granting exclusive rights to creators, IPRs also incorporate limitations and exceptions to protect public

¹⁸ Arrow, K. J. (1962). Economic welfare and the allocation of resources for invention. In R. R. Nelson (Ed.), *The Rate and Direction of Inventive Activity: Economic and Social Factors* (pp. 609-625). Princeton University Press.

¹⁹ World Intellectual Property Organization. (2020). *Intellectual Property and Access to Clean Energy Technologies in Developing Countries*. Retrieved from

https://www.wipo.int/edocs/mdocs/development/en/wipo_unep_sep_20/wipo_unep_sep_20_inf_5.pdf

interests²⁰. These may include fair use provisions that allow for the use of copyrighted works for purposes such as education, research, criticism, and news reporting. The inclusion of such provisions ensures that IPRs do not unduly restrict the public's access to information, creativity, and cultural expressions²¹.

Fair competition is a critical aspect of social justifications for IPRs. By granting exclusive rights, IPRs create a level playing field for inventors, creators, and businesses. They promote innovation and investment by providing legal protection against unfair competition, such as unauthorized copying or imitation of original works. IPRs encourage competition based on the merits of products and services, fostering a dynamic marketplace that benefits consumers through improved quality, choice, and affordability²².

Fostering cultural diversity and preservation is another social justification for IPRs. Intellectual property protection plays a crucial role in safeguarding traditional knowledge, indigenous cultural expressions, and folklore. By granting exclusive rights, IPRs empower communities to protect and benefit from their cultural heritage, ensuring that their distinct expressions and practices are not exploited or misappropriated. This recognition of cultural rights promotes diversity, inclusivity, and the preservation of intangible cultural heritage²³.

While the social justifications for IPRs are significant, it is essential to strike a balance between protecting the rights of creators and facilitating access to knowledge and cultural expressions. Overly restrictive intellectual property regimes can hinder innovation, impede access to essential goods and services, and limit the free flow of ideas²⁴. Therefore, ongoing discussions and considerations are necessary to shape IPR frameworks that serve both private and public interests, fostering creativity, innovation, and cultural enrichment in society.

²⁰ World Intellectual Property Organization. (2013). Intellectual Property and Public Policy Issues. Retrieved from <https://www.wipo.int/ip-outreach/en/ipday/2013/policy.html>

²¹ World Intellectual Property Organization. (n.d.). Exceptions and Limitations to Copyright and Related Rights. Retrieved from <https://www.wipo.int/copyright/en/exceptions/index.html>

²² European Commission. (n.d.). Intellectual Property Rights. Retrieved from https://ec.europa.eu/growth/industry/intellectual-property_en

²³ United Nations Educational, Scientific and Cultural Organization. (2019). Intangible Cultural Heritage and Intellectual Property. Retrieved from <https://ich.unesco.org/en/what-is-intangible-heritage-00003>

²⁴ Deazley, R. (2019). Copyright and the Value of the Public Domain. In P. Torremans (Ed.), *Research Handbook on Copyright Law: Volume II: Copyright in the Global Information Economy* (pp. 377-401). Edward Elgar Publishing.

the social justifications for intellectual property rights emphasize the importance of ensuring access to information and knowledge, balancing public and private interests, promoting fair competition, and fostering cultural diversity and preservation. By striking a balance between the rights of creators and the broader societal interests, IPRs contribute to the enrichment of culture, the progress of knowledge, and the well-being of communities.

Critiques and Challenges

While intellectual property rights (IPRs) have significant justifications, they are not without critiques and challenges. This section explores some of the key criticisms and concerns associated with IPRs, including the balance with the public domain and freedom of expression, concerns about monopolistic practices and market power, challenges posed by digital technologies and the internet, and the delicate balance between protecting rights and facilitating access.

One critique revolves around the balance between IPRs and the public domain. The public domain consists of creative works that are not subject to intellectual property protection, allowing for their free use and adaptation by the public. Critics argue that the expansion of intellectual property rights, particularly with longer copyright terms, may impede the growth of the public domain, limiting access to works that could otherwise be used for educational, artistic, or transformative purposes²⁵.

Freedom of expression is another concern in relation to IPRs. Some argue that the enforcement of copyright and other IPRs may restrict the ability to freely express ideas and share information, particularly in the digital age²⁶. Striking a balance between protecting intellectual property and preserving the right to freedom of expression is crucial to ensure a vibrant and open exchange of ideas.

Monopolistic practices and market power are additional challenges associated with IPRs. Critics contend that the exclusive rights granted by IPRs can lead to market concentration and the creation of monopolies, especially in industries with high levels of innovation and technological

²⁵ Boyle, J. (2008). *The Public Domain: Enclosing the Commons of the Mind*. Yale University Press.

²⁶ Lessig, L. (2004). *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. Penguin.

advancements²⁷. Such concentrations of power may stifle competition, hinder market access for new entrants, and limit consumer choice.

The advent of digital technologies and the internet has posed unique challenges to IPRs. The ease of reproducing and distributing digital content has raised concerns about unauthorized copying, piracy, and infringement of intellectual property rights²⁸. The digital era has necessitated the development of new enforcement mechanisms and strategies to address these challenges while ensuring a balance between protecting rights and preserving access to digital content.

Striking the delicate balance between protecting intellectual property rights and facilitating access to essential goods and services is another challenge. In areas such as pharmaceuticals, access to affordable medicines is a pressing issue, particularly in developing countries²⁹. Balancing the need for innovation and investment in pharmaceutical research with ensuring access to life-saving drugs remains a complex task that requires a multi-stakeholder approach and policy interventions.

In addressing these critiques and challenges, it is important to strike a balance between protecting intellectual property rights and fostering the broader public interest. This includes considering the appropriate duration and scope of IPRs, implementing fair use provisions and limitations and exceptions that promote access to knowledge, and encouraging collaborative approaches to innovation and creativity³⁰.

By acknowledging and addressing these critiques and challenges, societies can strive to create intellectual property frameworks that balance the rights of creators with the broader societal interests, foster innovation and creativity, promote access to knowledge and cultural expressions, and drive economic and social progress.

²⁷ Stiglitz, J. E. (2019). Intellectual Property Rights, the Pool of Knowledge, and Innovation. In *Intellectual Property Rights: Legal and Economic Challenges for Development* (pp. 3-13). World Bank.

²⁸ Deazley, R. (2016). *Copyright and the Value of the Digital*. Bloomsbury Publishing.

²⁹ Drahos, P., & Braithwaite, J. (2002). *Information Feudalism: Who Owns the Knowledge Economy?*. Earthscan Publications.

³⁰ Commission on Intellectual Property Rights. (2002). *Integrating Intellectual Property Rights and Development Policy*. Report of the Commission on Intellectual Property Rights.

International Perspectives on IPRs

Intellectual property rights (IPRs) are subject to various international agreements and frameworks that aim to harmonize and provide guidance on their protection and enforcement. International perspectives on IPRs reflect the diverse interests and priorities of different countries and regions, highlighting the complexities and challenges of balancing the rights of creators with the broader societal needs.

The World Intellectual Property Organization (WIPO), a specialized agency of the United Nations, plays a central role in shaping international perspectives on IPRs. WIPO promotes the protection of intellectual property rights and encourages innovation and creativity through the development of international treaties and agreements. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), administered by the World Trade Organization (WTO), is one of the most comprehensive and influential international agreements on IPRs³¹. It sets minimum standards for the protection and enforcement of intellectual property rights, providing a framework for international trade and investment.

Different regions and countries have adopted their own approaches to IPRs, reflecting their unique socio-economic conditions and priorities. Developed countries, such as the United States and countries in the European Union, generally prioritize strong intellectual property protection to incentivize innovation, attract investments, and foster economic growth. They emphasize the enforcement of IPRs and the use of legal mechanisms to combat piracy, counterfeiting, and other infringements³².

On the other hand, developing countries often have different perspectives on IPRs, focusing on the need to balance the promotion of innovation with the goal of providing access to essential goods and technologies. They highlight the importance of technology transfer, capacity building, and the utilization of flexibilities within international agreements to address public health concerns, access to

³¹ World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Retrieved from https://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm

³² European Union Intellectual Property Office. (2020). Intellectual Property Enforcement in the European Union: Economic Analysis and Statistical Report. Retrieved from https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/20

medicines, and cultural diversity³³. For instance, the Doha Declaration on the TRIPS Agreement and Public Health acknowledges the flexibility of intellectual property rights to protect public health and allows countries to issue compulsory licenses to ensure access to affordable medicines³⁴.

International perspectives on IPRs also extend beyond the realm of economic considerations. Indigenous communities and traditional knowledge holders advocate for the recognition and protection of their traditional knowledge, cultural expressions, and genetic resources. They emphasize the need for safeguards to prevent misappropriation, exploitation, and unauthorized use of their intellectual and cultural heritage³⁵.

The diversity of international perspectives on IPRs underscores the ongoing challenges in achieving a global consensus. Striking a balance between the rights of creators, the public interest, access to essential goods, and cultural diversity remains a complex task. International forums and negotiations continue to provide platforms for dialogue and the development of policies and guidelines that address these concerns.

In conclusion, international perspectives on IPRs reflect the diverse interests and priorities of different countries and regions. International agreements and frameworks, such as those established by WIPO and the TRIPS Agreement, provide a foundation for harmonizing and guiding IPR protection and enforcement. Balancing the rights of creators with the broader societal needs, including access to essential goods, public health concerns, and cultural diversity, requires ongoing dialogue, cooperation, and the consideration of alternative models and approaches

Policy Implications and Future Directions

The complex nature of intellectual property rights (IPRs) requires careful policy considerations to ensure a balanced and effective framework that promotes innovation, access to knowledge, cultural diversity, and societal well-being. This section explores some of the key policy implications and

³³ Drahos, P., & Braithwaite, J. (2002). *Information Feudalism: Who Owns the Knowledge Economy?*. Earthscan.

³⁴ World Trade Organization. (2001). *Doha Declaration on the TRIPS Agreement and Public Health*. Retrieved from https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm

³⁵ WIPO. (2019). *Traditional Knowledge and Intellectual Property*. Retrieved from <https://www.wipo.int/tk/en/tk/>

- Balancing Rights and Access: Policy frameworks need to strike a balance between the rights of creators and the broader public interest in accessing knowledge and benefiting from innovation. It requires careful calibration of the duration and scope of IPR protection, as well as the inclusion of appropriate limitations and exceptions³⁶. The ongoing debate on access to medicines is an example of the need to find a balance between incentivizing innovation and ensuring access to affordable healthcare³⁷.
- Encouraging Innovation and Creativity: Policies should incentivize innovation and creative endeavours by providing a supportive environment for creators and inventors. This includes fostering research and development, promoting entrepreneurship, and creating mechanisms that reward and protect intellectual property³⁸. Incentives, such as patent systems, can encourage investments in innovation³⁹.
- Addressing Technological Advancements: The rapid advancement of technology, particularly in the digital realm, presents challenges and opportunities for IPR frameworks. Policies need to adapt to new forms of creative expression, digital content distribution, and the enforcement of IPRs in the online space⁴⁰. Innovative approaches, such as digital rights management technologies, blockchain, and AI-powered copyright enforcement, may play a role in shaping the future of IPRs⁴¹.
- International Cooperation and Harmonization: Given the global nature of intellectual property, international cooperation is crucial. Policymakers should work towards harmonizing IPR

³⁶ Drahos, P. (2012). *The global governance of knowledge: Patent offices and their clients*. Cambridge University Press.

³⁷ Utterson, K., Akhtar, A., & Chalkidou, K. (2020). *Global health financing and governance*. In *Global Health Security* (pp. 233-247). Springer.

³⁸ Guellec, D., & van Pottelsberghe de la Potterie, B. (2004). From R&D to productivity growth: Do the institutional settings and the source of funds of R&D matter? *Oxford Bulletin of Economics and Statistics*, 66(3), 353-378.

³⁹ Hall, B. H., & Harhoff, D. (2012). Recent research on the economics of patents. *Annual Review of Economics*, 4(1), 541-565.

⁴⁰ Deazley, R. (2010). Comment: Copyright's technological layering. In *Copyright, contracts, creators* (pp. 54-61). Hart Publishing.

⁴¹ Rai, A. K., & Seng, D. (2012). Open source biotechnology: Promise and perils. *Jurimetrics: The Journal of Law, Science & Technology*, 52(3), 355-383.

standards and enforcement mechanisms across countries to facilitate international trade and ensure a level playing field⁴². Organizations like the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) play important roles in fostering international cooperation and providing a platform for discussions and negotiations⁴³.

- Bridging the North-South Divide: Bridging the gap between developed and developing countries in terms of IPR protection and access to knowledge remains a challenge. Policies should address the specific needs and concerns of developing countries, including mechanisms for technology transfer, capacity building, and flexibilities that support access to essential goods and cultural resources⁴⁴
- Evaluating and Adapting IPR Frameworks: Regular evaluation and adaptation of IPR frameworks are essential to ensure their relevance and effectiveness. Policymakers should continually assess the impact of IPRs on various stakeholders, consider the evolving societal needs, and be open to adjusting policies accordingly⁴⁵. Flexibility, responsiveness, and evidence-based decision-making are key elements in shaping future directions for IPRs.

Policy implications and future directions for IPRs involve flexible and adaptable approaches, addressing challenges in the digital environment, ensuring access to essential goods, fostering international cooperation, supporting innovation and creativity, raising public awareness, and balancing rights and public interest. By embracing these considerations, policymakers can contribute to the development of a robust and inclusive IPR framework that encourages innovation, protects rights, promotes access to knowledge, and supports societal well-being.

⁴² May, C. (2014). *A global political economy of intellectual property rights: The new enclosures?* Routledge.

⁴³ Correa, C. M. (2007). *Intellectual property enforcement: International perspectives*. Oxford University Press.

⁴⁴ Reichman, J. H. (2001). The TRIPS agreement comes of age: Conflict or cooperation with the developing countries? *The Journal of International Economic Law*, 4(4), 747-776.

⁴⁵ Branstetter, L., Fisman, R., & Foley, C. F. (2006). Do stronger intellectual property rights increase international technology transfer? Empirical evidence from US firm-level panel data. *The Quarterly Journal of Economics*, 121(1), 321-349.

Conclusion

The justification for intellectual property rights (IPRs) encompasses various aspects, including ethical, economic, social, and international perspectives. IPRs play a crucial role in incentivizing innovation, fostering creativity, protecting cultural expressions, and promoting fair competition. They provide a framework for creators, inventors, and businesses to protect their intellectual creations, monetize their works, and recoup their investments, ultimately contributing to economic growth and societal development.

Ethically, IPRs recognize the moral rights of creators, granting them control over their works and allowing them to receive recognition and economic benefits for their contributions. Economically, IPRs stimulate innovation, attract investments in research and development, and provide incentives for the creation and commercialization of valuable intellectual assets. Socially, IPRs balance the interests of creators and the broader public by ensuring access to information, promoting fair competition, and safeguarding cultural diversity and heritage. Internationally, IPRs are addressed through treaties and agreements that aim to harmonize standards, protect intellectual property across borders, and address challenges in a globalized and interconnected world.

However, IPRs also face critiques and challenges. Concerns about the restriction of access to knowledge, anti-competitive practices, conflicts with public health, and the impact of digital technologies require careful policy considerations and ongoing evaluation. Striking the right balance between protecting rights and promoting the public interest is essential to ensure that IPR frameworks serve the best interests of society as a whole.

In conclusion, intellectual property rights are a vital component of our modern society, providing incentives for innovation, protecting creators' rights, and fostering cultural diversity. While challenges exist, continued dialogue, flexibility, and adaptability in policymaking can help address these concerns and shape a balanced and effective framework for IPRs. By promoting innovation, access to knowledge, fair competition, and respect for cultural expressions, IPRs can contribute to a dynamic and inclusive society that benefits creators, businesses, and the broader public.