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IPR AND CONSUMER KINGSHIP: RETHINKING THE BALANCE BETWEEN PRIVATE RIGHTS AND PUBLIC INTEREST

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Abstract

Intellectual Property law is based on a deal made between the state and private individuals which balances rights with the needs of society at large. IP rights encourage original ideas and innovation in art, science and a multitude of fields but if they get too large they can limit people's ability to acquire necessary good, knowledge, education and technology. This paper talks about the tension between intellectual property and public interest, analysing whether the usual ways of thinking about consumer welfare and balances are enough. This paper argues that the people affected by intellectual property laws aren't merely consumers but also patients, students, researchers etc and cannot be an afterthought to private intellectual property rights. The paper looks at how new technologies in 2026 such as protection tools and generative AI, create new problems especially when there are current conflicts over copyright and AI training and places these changes inside the rules set by the TRIPS Agreement, explaining what this means for countries in the Global South.

Introduction

The legal structure of intellectual property is based on a bargain between the State and private individuals. In exchange for disclosure of inventions, creative marks and original works, the State gives private individuals exclusive rights over that work for a limited time.¹

In recent decades, international frameworks established by the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") have institutionalised an universally accepted baseline of protection.² While this framework seeks to protect investments and

¹ William W Fisher III, 'Theories of Intellectual Property' in Stephen R Munzer (ed), *New Essays in the Legal and Political Theory of Property* (Cambridge University Press 2001) 168 2026.

² Agreement on Trade-Related Aspects of Intellectual Property Rights (adopted 15 April 1994) <https://www.wto.org/english/docs/E/legal/E/27-trips.pdf> accessed 27 August 2026.

facilitate international trade, it raises questions about whether a standard of high private protection appropriately balances corporate efficiency with the access needs of developing societies, particularly within the Global South.

Consumer Kingship and The Idea of Balance

To evaluate the perimeter between exclusivity and public access, it is important to first define the terms in the debate. The popular narrative of “consumer kingship” represents a distinct market focussed standard. It puts the consumer as the sovereign of the market, whose welfare is maximised through price, choice, and quality within transaction-level exchanges. IP law and competition law do different job. IP rights exist to give innovators a reason to create but without exclusivity, why would anyone bother inventing or investing if competitors could just copy the result for free? So patents, copyrights and trademarks are essentially incentives, calibrated to keep the supply of new ideas and products into the market. A farmer seeking access to seeds, a terminal leukaemia patient requiring lifesaving medication, a university student needing copies of a textbook, or a software engineer seeking to build systems are not just “consumers” seeking a better price. They are also users, patients, innovators, creators, and citizens. Consequently, the interests at stake are more accurately thought of under the broader standard of the public interest and the access to knowledge movement than narrow “consumer welfare.”³

This conceptual reframing reveals that the conventional rhetoric of “balance” between private rights and public interest is itself an evasive, ideological construct.⁴ By presenting the IP system as an inherently self-correcting scale, lawmakers and courts avoid making the difficult, explicit distributive choices that the governance of knowledge demands. Historically, the expansion of IPRs through international treaties such as the TRIPS Agreement has been driven by intense lobbying from content and technology exporting industries in the Global North, rather than a systematic or scientific method.

Patent Law

Patent law is the clearest arena where the conflict between private exclusivity and public access manifests. Under Section 3(d) of the Patents Act, 1970, the Indian legislature introduced an

³ Amy Kapczynski, ‘The Access to Knowledge Mobilisation and the New Politics of Intellectual Property’ (2010) 117 Yale Law Journal https://yalelawjournal.org/pdf/642_y36bb3ab.pdf accessed 25 August 2026.

⁴ Lokesh Vyas, ‘Taking Copyright’s “Balance” Too Seriously’ (2023) 13(1) Indian Journal of Intellectual Property Law 73 <https://sciencespo.hal.science/hal-04513141v1/document> accessed 31 August 2026.

explicit non-patentability mechanism. The provision denies patentability to the “mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance.”⁵

The definitive judicial test of this provision arose in *Novartis AG v. Union of India*.⁶ Novartis challenged the rejection of its patent application for the Beta-crystalline form of imatinib mesylate (marketed as the leukaemia drug Glivec). The Supreme Court dismissed the appeal, holding that “efficacy” under Section 3(d) must be interpreted strictly as “therapeutic efficacy” in the pharmaceutical context. Improved physical properties, such as thermodynamic stability or increased bioavailability, did not automatically suffice unless they translated into a demonstrable increase in therapeutic effect on the human body.⁷ Therefore, this case represented an influential public-interest oriented interpretation of patent eligibility. By raising the bar for derivative patents, the Court prevented the evergreening of a vital cancer drug, preserving generic competition that reduced the price of imatinib.

Even where a patent has been validly granted, its exercise can result in public interest failures, particularly when the price of the patented input is prohibitive. To address this failure, patent law provides ex post correctives. The primary domestic corrective is compulsory licensing under Section 84 of the Patents Act, 1970. In the landmark case of *Bayer Corporation v. Natco Pharma Ltd.*,⁸ the Controller General of Patents granted India’s first-ever compulsory license over Bayer’s patented kidney and liver cancer drug. The decision, which was subsequently upheld by the Intellectual Property Appellate Board (“IPAB”) in 2013 and the Bombay High Court in 2014, established that high pricing may also trigger a compulsory license.

*“Dismissing Bayer’s contentions, it opined that the sole consideration in granting compulsory licenses was whether the patented product was available to the public at a price that was reasonably affordable for them. Bayer argued that it had instituted an effective Patient Assistance Program (‘PAP’) subsequent to the application which should be taken into account. However, this was overruled by the IPAB on the ground that philanthropic proposals would not count for the purposes of satisfying the requirements of §84.”*⁹

⁵ Patents Act, 1970.

⁶ *Novartis AG vs. Union of India* (2013) 6 SCC 1.

⁷ Ibid, Para 180.

⁸ *Bayer Corporation v Natco Pharma Ltd. & Ors.*, OA/35/2012/PT/MUM.

⁹ Mansi Sood, ‘Natco Pharma Ltd v Bayer Corporation and the Compulsory Licensing Regime in India’ (2012) 5(2) NUJS Law Review <https://nujslawreview.org/index.php/lr/article/view/377/371> accessed 28 August 2026.

Under the earlier standard, patentees often argued that working an invention did not require domestic manufacture. While the Natco jurisprudence firmly integrated public interest parameters, Public-interest interventions in IP are not cost-free. Stronger limitations on exclusivity can generate concerns about investment incentives, technology transfer, the incentive to continue R&D, and India's attractiveness to rights-intensive industries.

Copyright Law

While patent law utilises ex ante patentability thresholds to prevent monopolies, copyright law addresses public access primarily through ex post use-privileges and exceptions. A common defence of public access is the educational exception. The leading precedent on this point is the *DU Photocopy case*.¹⁰ Three major academic publishers sued Delhi University and a campus photocopy kiosk for compiling and distributing customised “course packs” comprising photocopied chapters of academic textbooks. The Delhi High Court Division Bench ruled in favour of the university and the photocopy kiosk, holding that the preparation of course packs fell squarely within the statutory exception of Section 52(1)(i) of the Copyright Act, 1957, which exempts reproduction “by a teacher or pupil in the course of instruction”¹¹ as long as it was justified by the purpose of educational instruction. This represented a purposive, public-interest-forward model of adjudication, treating the constitutional right to education as a primary value that defines the outer boundary of copyright, rather than a subordinate market exception.

However, the US has generally taken a more right-holder-forward view through term extension as evident in the case of *Eldred v. Ashcroft*, which retroactively extended the copyright duration by 20 years.¹² The decision effectively deferred the entry of a massive cohort of 20th-century cultural works into the public domain, privatising intellectual commons through legislative lobbying.

Eventually, developments like Technological Protection Measures (“TPMs”) were brought in to prevent circumvention of the technical safeguard put on digital copyrighted works.¹³ Because circumvention is statutorily prohibited, these digital locks effectively allowed private

¹⁰ University of Oxford v. Rameshwari Photocopy Services, 2016 SCC OnLine Del 629.

¹¹ Section 52, The Copyright Act, 1957

¹² Eldred v. Ashcroft, 537 U.S. 186 (2003)

¹³ Section 65A, The Copyright Act, 1957

works to override statutory fair-dealing exemptions. This digital enclosure was a threat to access to knowledge, as it renders statutory use-privileges illusory in the digital environment.

“With a view to ensure that the legitimate rights of the public are not affected and also to ensure that there is free flow of information and adequate opportunity for all to access the same, most nations that incorporated protection to technological measures itself has provided for certain circumstances in which the applied technological measures can be legally circumvented. It was advocated that these situations permitting circumvention of the technology, along with the exceptions and limitations to copyright, are adequate to protect and safeguard the interest of the public at large.”¹⁴

The Indian Copyright Act permits the actual circumvention of technological protection measures, provided it is undertaken for a purpose not expressly prohibited under the Act. Since the Act primarily prohibits acts amounting to copyright infringement under Section 51, circumvention for non-infringing purposes may fall outside the scope of liability.¹⁵

This, however, is now being debated again with the advent of Generative AI. Large-scale AI training requires the ingestion and processing of massive corpora of copyrighted works. Rights-holders argue that such ingestion constitutes mass infringement, while developers contend it is transformative fair use. The ruling in *ANI v. OpenAI*¹⁶ undertook a detailed analysis under section 52 and found, on a prima facie view, that OpenAI's training satisfied both the purpose test and fairness test in the circumstances before it. The court balanced considerations such as economic competition against the copyright owner, and wider public considerations like scientific progress, technological development, access to information and dissemination of knowledge, in reaching its decision. For rightsholders, this restricts control over AI training uses unless the rightsholder can prove significant amounts of copying or substantial adverse impacts on the relevant markets, thus reducing incentive accordingly. For AI corporations, it provides immense immunity against licensing disputes.¹⁷ Consumers may benefit through more affordable and competent AI products made possible because of such a ruling. Nevertheless, the judgment fails to resolve a fundamental tension at the heart of copyright law, between

¹⁴ Arathi Ashok, ‘Technological Protection Measures and Copyright Exceptions: The Rights of the Common Man in the Developed World’ (2014) SSRN Electronic Journal <https://doi.org/10.2139/ssrn.2437370> accessed 29 August 2026.

¹⁵ Ibid.

¹⁶ *ANI Media Pvt. Ltd. vs. Open AI LLC*, 2026: DGC: 6011.

¹⁷ Aparajita Lath, ‘Public Interest, Copyright and Fair Dealing: ANI v OpenAI’ (SCO Observer) <https://www.scobserver.in/journal/public-interest-copyright-and-fair-dealing-ani-v-openai/> accessed 26 August 2026

incentivizing creation without stunting AI technology in a way that renders its development unfeasible.

Conclusion

The analysis above clearly shows that the relationship between IPR and public interest is not a stable, balanced equilibrium. The internationalisation of IP standards through the TRIPS Agreement has constrained the policy space of developing nations, converting public health, food security, and education into trade-offs for commercial market access. India's only compulsory licence case in over fourteen years highlights that these ex-post safety measures function as emergency protocol rather than regulatory tools. To move beyond the limitations of the market-centric consumer standard, regulators and courts must adopt a multifaceted qualitative framework that evaluates the economic and social reality of the governance of knowledge. Just as modern corporate governance has begun to move beyond single-metric financial indicators to incorporate broader stakeholder values, IP law must evolve and turn to focus on the constitutional-adjacent values of access to knowledge, public health, and education as primary legal entitlements that define and limit private exclusivity. Only by asserting these public values as the structural baseline of the legal order can the state hope to restore the integrity of the public domain and secure the welfare of its citizens.