



CORVINUS LAW PAPERS

ISSN 2416-0415

3/2021

Alan Jeffrey

Intellectual Property Issues in International Business

CORVINUS UNIVERSITY OF BUDAPEST

Corvinus Law Papers

CLP 3/2021

The primary purpose of the Corvinus Law Papers (CLP) is to publish the results of research projects performed by those connected to the Department of Business Law as research reports, working papers, essays and academic papers. The CLP also publishes supplementary texts to be used for practical and theoretical training of students.

Editor-in-Chief:

Dániel Bán (Associate Professor, Corvinus University of Budapest, Department of Business Law)

Contact: daniel.ban@uni-corvinus.hu

Editorial Board:

Dániel Bán (Associate Professor, Corvinus University of Budapest, Department of Business Law)

Contact: daniel.ban@uni-corvinus.hu;

Mónika Csöndes (Assistant Professor, Corvinus University of Budapest, Department of Business Law)

Contact: monika.csondes@uni-corvinus.hu;

Zoltán Nemessányi (Associate Professor, Corvinus University of Budapest, Department of Business Law)

Contact: zoltan.nemessanyi@uni-corvinus.hu

Address of the Editorial Board:

Corvinus Law Papers
1093 Budapest, Fővám tér 8. III. emelet 321/A

Publisher:

Corvinus University of Budapest
H-1093 Budapest, Fővám tér 8.

Responsible for the edition:

Dániel Bán

ISSN 2416-0415

Intellectual Property Issues in International Business

Alan Jeffrey
Corvinus University of Budapest
e-mail: jeffrey.alan@uni-corvinus.hu

Abstract: With the ever-increasing numbers of businesses seeking to expand, together with the opening of new potential markets, the need and, indeed, importance of protecting intellectual property rights increases also. As should be noted in this article, the largest problem appears to be recognition of the need for a universal regulation of intellectual property rights. With an increase in the international commercial flow, concern for intellectual property protection has unquestionably increased. As technology advances, so protection of intellectual property needs new input, which must lead to changes in existing protections.

Key words: intellectual property, industrial property, copyrights, foreign direct investment, trade-protected intellectual property rights

With free trade zones growing in popularity, intellectual property regulators world-wide are under increased pressure because of the volume of applications and pressure to respond faster.

Intellectual property can be identified in two distinct descriptions –

1) *industrial property* (patents (inventions), breeders' rights (new agricultural plant varieties), trademarks (identifying the producer's signatory marks and/or sign), trade secrets of any description (no need to register this and no limited duration), designs for industry, geographical sourcing) and

2) *copyrights* (music, literary works of all descriptions, including visuals such as films and art).

At present, generally, patents and trademarks are protected from copying for twenty years and copyrights for one hundred years.

Intellectual property rights for exclusive usage and protection are granted by governments to firms or individuals. As such, any grant is a territorial issue, with various countries respecting the need for protection in various ways and at varying levels.

Adequate protection standards are extremely vital for trade and also investment, both local and via FDI (Foreign Direct Investment), to ensure a level of confidence. As a result, pressure to improve protection has resulted in a number of regional negotiations across borders. Progress can be slow, but a major achievement is TRIPS (an agreement on Trade-Protected Intellectual Property Rights), since January 1st, 1995, an important part of the work of the WTO (World Trade Organisation).

Here was the need to look at minimum levels of protection and this has applied especially to countries still in a state of economic, social and cultural development, in order to seek to counter exploitation.

Patents have proven to be extremely important, enabling, for a significant period, exclusion of competition from manufacturing, sales or utilisation of a process or product unless authorisation has been granted by the patent holder. To seek to ensure a minimum innocent oversight by a rival, patents are available from their outset for public scrutiny.

Trademarks offer exclusivity and potential consumer recognition, thereby encouraging organisations to look to quality investment in their goods/services. The protection of marks which attain a level of fame gives useful market advantage (for example, Nike's famous 'tick').

Enforcement of all intellectual property rights and entitlements necessitates avoiding any form of infringement. Legal action is the tool required and commonly includes goods seizure (even at ports, not just place of manufacture), substantial fines and various additional criminal penalties.

There remains the problem of the unevenness with which intellectual property is protected, as it remains a consideration for individual nations internally. Thus, intellectual property entitlements granted in one country may not necessarily be recognised and able to be enforced in another country, unless the intellectual property proprietor undertakes the necessary procedural steps in both. In the European Union, steps have been taken to establish European offices to deal with intellectual property. If effectively registered, the protection may be offered (after national validation) by all EU and EU-affiliated states.

Under most rules and regulations globally, there is a level of consideration not only for a creator's right of ownership, but also that nation's societal needs and this is where enforcement is necessary, in order to give confidence to all forms of investment and offer opportunities for economic growth. Of course, the need for reform and overhaul of intellectual property rights has long been recognised, but progress has been somewhat tardy. As far back as 1883, the Paris Convention became the initial treaty for intellectual property, confirming that trademarks and patents successfully registered in any one signatory state will receive similar treatment in other signatory states akin to domestic applications. However, the inherent problems with the treaty were it offered no guidance as to minimum standards, particularly with patents, and there was an absence of the mechanics of enforcement. So, still a lengthy way to go to obtain some form of universal regulation.

TRIPS (as earlier mentioned) was an attempt to seek more effective protection by the private sectors and their respective governments by working together to enable increased levels of international trade and to avoid market distortion by seeking to establish more unequivocal protection standards.

TRIPS certainly took intellectual property protection to a new level, establishing specific measures of enforcement, dispute settlement and providing the WTO (World Trading Organisation) with the ability to establish transitional arrangements for developing WTO member states.

However, there are still conflicts of laws between some countries and still, therefore, the need for greater global Intellectual property regulation of a consistent nature. There continue to be a host of other international treaties, but they tend to relate to individual intellectual property issues, rather than overall.

More than ever before, businesses from so many countries are moving into competitive global markets and the need for intellectual property protection is essential to trading internationally. Countries which have inadequate intellectual property protective systems will find counterfeiting and imitation rife within their borders, particularly vulnerable developing countries. Bribery and intimidation by counterfeiters in such countries offer two main issues – firstly, the discovery of such corruption does not necessarily afford the legal machinery to enforce intellectual property

rights and, secondly, the problem is trying to discover the existence and source of such corruption in order to seek to address it.

Intellectual property protection has a history of being somewhat reactive, rather than proactive, to many issues. It is one thing to recognise problems and issues, quite another to put in place on a universal scale at least a minimum measure of protection on a proactive basis. Organisations such as Transparency International provide governments and international organisations with useful information in relation to major breaches of intellectual property protection, but it relies a good deal on 'whistleblowing' from within both private and public sectors.

These can lead to trade imbalances and the potential loss of an intellectual property producer/manufacture's good name.

Reliant on the need for acquiring knowledge and talent, there must also be the need for generating stable environments and greater effective protection, legally, of intellectual property rights, especially whereon courts need to become more reliant and effective and cheaper to enter proceedings.

All these factors are challenges for governments, who are now displaying signs of working in cooperation with international organisations. The value of doing so is more transparent – that of economic growth and competition producing increased quality.