CHAPTER VIII

8.0 INTERNATIONAL INTELLECTUAL PROPERTY TREATIES & HUMAN RIGHTS

Originally, trademark rights were severely limited in their geographical scope, inasmuch as each nation possessed its own law and practice independent of all others. Not until the late nineteenth century did nations consider cooperating in order to protect the rights of their nationals in neighboring countries. When these nations also recognized that the trademark right afforded by their neighbors differed significantly from their own, the desire grew to ensure that nationals of one national would not be greatly disadvantaged by the laws or practices of another nation. This desire formed the early roots of "harmonization" of intellectual property laws.

8.1.0 (A) PARIS CONVENTION

One of the most far-reaching examples of an attempt at uniform treatment of trademark owners and international trademark law, and creation of a multinational regime governing intellectual property rights was the Paris Convention for the Protection of Industrial Property of March 20, 1883. The Paris Convention became effective on March 7, 1884. This convention has undergone several revisions, the most recent being the Stockholm Amendment of July 14, 1967. Today, more than 100 countries are members of the Paris Convention.

8.1.1.(B) OTHER TREATIES

In addition to the Paris Convention, nations have adopted other treaties of a limited bilateral or multilateral nature. These include the treaty between France and Italy; the Benelux Treaty, which creates one registration covering the territories of Belgium, the Netherlands, and Luxembourg; and the OAPI arrangement, which created one registration covering Cameroon, Central African Republic, Chad Congo, Benin, Gabon Guinea, Mali, Ivory Coast, Mauritania, Senegal, Togo, Burkino Fiso, and Niger. Other conventions also harmonize laws and grant certain reciprocal rights, for example, the Pan American Convention of 1929, the Central American Convention, and the Decision of the Andean Pact Countries.
8. 1.2 (C) THE MADRID AGREEMENT

In 1891 the Madrid Agreement concerning the International Registration of Marks arose out of the Paris Convention. The Madrid Agreement is a special arrangement under the Paris Convention, and only countries party to the Paris Convention join the Madrid Agreement.

Today 133 countries are members of the Madrid Agreement. The Madrid Agreement extends the general principles adopted by the Paris Convention by establishing trademark protection, through registration with the intermediary of a Central Registration Bureau. This Bureau is located in Geneva Switzerland and administered by the World Intellectual Property Organization (WIPO), an organ of the United nations.

Under the Nice and Stockholm Acts, the protection resulting from international registration remains dependent on the protection afforded the “home” or “basic” registration for a period of five years from the date of international registration. Therefore, if the home registration terminates for any reason within that period, all registrations based on it also cease, regardless of whether the reason for the home registration’s elimination emanates from a third country. This provision is referred to as “Central attack”.

If, within five years from the international registration date, the home registration is cancelled or its coverage of goods and services is limited voluntarily or ex officio, the office of the country of origin must request that the International Bureau either cancel the international registration or enter a corresponding limitation in the list of goods or services covered by that registration. The International Bureau may in this regard act only upon the request of the office of the country of origin.

Judicial proceeding may be instituted in the home country against the basic registration before the five-year period expires. In the case, the home country must send the International Bureau, ex officio or at the plaintiffs request, a copy of the complaint or other documentary evidence that an action has commenced including the decision of the court. The International Bureau then enters an appropriate notice in the International Register.

After five-year dependency period has expired, the international registration may be attacked only under the individual national laws where the international registration has been extended. However, renewal, changes in proprietorship details
and the like may still be affected in all designated countries by a simple filing at the International Bureau¹.

Protection can be refused to a mark recorded in the International Register only for reasons applicable to a national registration filing under the Paris Convention. The Paris Convention States that the conditions for the filing and registration of trademarks are determined in each country of the convention by its domestic legislation. It further establishes that every trademark duly registered in the country of origin, as is always the case with international registrations, is accepted for filing and protected as in the other countries of the convention, subject to the cases of refusal or invalidation referred to in the Article 26. A mark may also be refused because it is likely to infringe rights previously acquired by a third party.

WIPO endeavoured for several years to draft a new treaty that would ameliorate the "objectionable" provisions of the Madrid Agreement. This was an effort to bring about acceptance by those nations that had refused to adhere to the Agreement and Simultaneously maintain the tenets of the existing treaty to accommodate the current Madrid members².

8.1.3 (D) THE EUROPEAN COMMUNITY TRADEMARK

An economic-political Creation, the European Union (EU) has also been the impetus for changes in trademark law and practice. Trademarks identity goods and services but absent international agreement to the contrary, can be enforced only in the jurisdiction in which they are registered. Thus, trademarks registered in one member state are not automatically protected in another member state; thereby, the free movement of goods across borders is hindered and trade barriers are created.

The European Union of 12 nations proposed, as part of its removal of all trade barriers by 1992, the creation of one unified trademark law with one registration system to cover the entire Union. At first it was believed that a treaty would be required; however, the European Commission concluded that it could proceed by regulation.

The Council Regulation (EC) No. 40/94 of December 20, 1993 on the community Trademark was published in the European Unions Official Journal of January 14, 1994 (37 OJ No. L 11) and took effect on March 15, 1994. The Regulations consist of more than 100 sections. They provided that the community Trademark (CTM) will be registered for the entire European Union and will have

² Supra I - p. 205 – 206).
identical effect throughout the Union, and that the CTM will not replace national registration systems.

8.1.4 (E) THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

Over the last decade the United States has sought worldwide recognition of high standards of intellectual property protection and enforcement through unilateral, bilateral, and multilateral measures. Of all of these initiatives, NAFTA, negotiated in 1992 and already ratified by the United States and Mexican Congress and the Canadian Parliament, provides the most satisfactory protection for intellectual property rights to date.

Building on the work done in the General Agreement on Tariffs and Trade (GATT), specifically on trade-related intellectual property rights (TRIPs), or the Dunkel TRIPs Text as they are also called, and on various international intellectual property treaties, NAFTA establishes a high, level of obligations regarding intellectual property.

Chapter 17 of NAFTA establishes the rights and obligations of the three contracting parties with respect to intellectual property rights. These rights relate "to copyright and related rights trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeding rights, rights in geographical indication and industrial design rights".

8.1.5 (F) TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS (TRIPs) in GATT

Through GATT, a substantial strengthening of intellectual property rights has been achieved. Intellectual property protection was a major component of the Uruguayan Round of multilateral trade negotiations, under trade-related intellectual property rights (TRIPs). The Dunkel Draft contains a text on TRIPs (the Dunkel TRIPs Text) that better protects Intellectual Property than the current regime of multilateral agreements.

NAFTA represents a major improvement in protection for intellectual property rights. Its negotiators started with the Dunkel TRIPs Text's provisions on intellectual property and built upon them.

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3 Supra 1, p. 215

4 Supra 1, p. 217-218
The Dunkel TRIPs Text provides an effective system of protection for trademarks, as well as for service marks. It, stipulates that actual use of a trademark will not be a condition for filing an application for registration. It does not permit discrimination in granting trademark protection based on the nature of the goods or services involved.

Publication of a trademark occurs prior to registration of the trademark, thereby affording a reasonable opportunity for actions to cancel the registration to be filed. An opportunity for interested parties to oppose a registration is not specifically included in the Text.

As to the rights conferred, a registration can prevent a third party from using a similar or identical trademark for goods or services that are identical or similar to those for which a trademark is registered where such use would result in a likelihood of confusion.

Article 6 bis of the Paris Convention is included in the Text and will apply in determining whether a trademark or service mark is well known. The Dunkel TRIPs Text allows limited exceptions to trademark rights (such as fair use of descriptive terms); any such exceptions must take into account the legitimate interests of the trademark owner and other persons.

As to the term of protection afforded by the Text, a trademark registration will span no less than seven years and can be renewed on indefinite number of times.

The Dunkel TRIPs Text prohibits special requirements that encumber the use of a trademark in commerce including requirements of use that reduce the function of the trademark as an indication of sources, or other requirements for use with another trademark.

It also provides, in Article 21, for full contractual rights for trademark owners, including the right to assign a trademark with or without the transfer of the business to which the mark belongs. Conditions on licensing and assignments are allowed. It is regrettable that there is no definition of such “conditions”. Finally compulsory licensing of trademarks is not allowed5.

Databases have also been the subject of attention in the international arena. Their status as copyrightable subject matter is guaranteed by the two major multilateral treaties relating to copyright: the Berne Convention for the protection of Literary and Artistic works and the Agreement on Trade-Related Aspects of

5 Supra 1, p. 219-220
Intellectual property Rights (TRIPs). The TRIPs Agreement requires world Trade Organization member countries to protect "compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations". A similar obligation is contained in the World Intellectual Property Organization (WIPO) copyright Treaty concluded in Geneva in December 1996, which has not yet become effective.

8.2 PROTECTION OF COMPUTER PROGRAMMES

Computer programs are protectable under copyright law and can be registered with the copyright office as literary works, regardless of their medium. Thus object code, source code, disks, and CD-ROMs can all be protected. Because of the case of registration and modest filing fees, numerous authors have registered their computer programs with the copyright office. Only one registration per work is required, and computer screen displays and accompanying instruction manuals are considered part of the computer program so that only one registration need be sought for the work. Because a computer program can include trade secrets, the copyright office allows the copyright claimant to block out portions of the program to protect such trade secrets. TRIPs made significant progress over pre-existing international copyright law in clarifying that computer programmes should be protected as literary works (Article 10.1). The Berne Convention, in Article I, defines the objective of the Berne Union as the protection of the rights of authors in their literary and artistic works'. Article 2 of this Convention then goes on to define this term. These are broadly defined as 'every production in the literary, scientific or artistic domain, whatever may be the mode or, form of its expression'. TRIPs now clarifies that computer programmes are eligible for protection under copyright law.

The demand for protection of computer programmes under copyright is found in early submissions made by both, the US and the EU in 1987-88. The EU-only wanted these to be protected as works of applied are i.e. for a period of 25 years from the date of creation, while the US wanted the normal term applicable to all copyrighted works. During the negotiations, protection of computer programmes as 'literary works' met with considerable opposition from developing countries, particularly those in Latin America, as this ensures a term of protection of at least 50 years from the date of creation. These countries would have preferred a sui generis system of protection for computer software or at least a shorter term of twenty-five

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years, as allowed for works of applied art. The text submitted by 14 developing countries in May 1990, W/71 only called for an undertaking to cooperate in identifying a suitable method of protection of computer programmes and to evolve suitable international rules on this subject not all developing countries, however, had such reservations on this issue. At the time of the negotiations, at least one developing country, India, already protected computer software as a literary work in its copyright law from as far back as 1983.

Article 10.1 of TRIPs now provides for the protection of computer programmes, whether in source or object code, as literary works. By specifying that computer programmes are to be protected as literary works, the shorter term of protection of 25 years applicable to work of applied art under the Berne Convention [Article 7(4)] was explicitly excluded. The debate on whether the functional object code of a computer programme was also protectable under copyright was also laid to rest as TRIPs requires such protection for both source and object code. Most national copyright laws allow the making of additional or back up copies as a limitation to the exclusive rights to computer programmes, if this is required as a part of normal use.

The copyright protection under TRIPs constitutes a big step forward in attempting to eliminate the large scale piracy of popular software taking place in developing countries, which involves straight forward duplication. In addition, TRIPs provides for trade secret protection in Article 39, although this is not an effective form of IP protection for software in itself since reverse engineering is allowed and all elements of the software cannot be kept secret.

After seven years of deliberations, Brazil enacted a new law on software (law no 9609/98) in February 1998 that protects software as a literary work for a term of 50 years from the year first publication or creation.

Argentina amended law 11.723 in November 1998 to allow copyright protection to computer software. Developing countries already at a certain technological skill level in creating software will find it in their interest to grant strong protection to such domestic innovations.

8.3 LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

Unlike industrial designs, layout-designing of integrated circuits are highly functional and help to reduce the dimensions or increase the functions of integrated circuits incorporated in semiconductor chips. These chips are incorporated into a

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variety of products, including computers, washing machines. Such deigns are usually the result of huge capital investments and require a high degree of skill. Layout-designs are usually protected under sui generis laws that do not fit either the industrial property or copyright paradigms. Copyright protection is also automatically available, without formalities, upon the creation of a design. However, even while copyright gives a longer term of protection, unlike sui generis rights, copyright protects only against direct reproduction. Also, reliance only on copyright protection for layout-designs may be disadvantageous to the right holder as the dependant can get away with infringement if he fails the ‘visual similarity’ test. Unlike in the case of industrial designs, ‘double protection’ under two types of IPRs is usually prohibited. Patent protection is also available in some jurisdictions for layout-designs, notably in the US. Thus, layout-designs that are new, non-obvious and industrially applicable are accorded patent protection in some countries although in many others such designs are considered to be equivalent to algorithms or computer programmes and are excluded from patent grant, even if otherwise patentable. However, the level of originally required for patent protection is higher than that required under copyright or under sui generis protection for layout designs.

Layout-designs of integrated circuits have been granted sui generis protection fairly recently as the technology for these evolved only in the late 1970s and early 1980s. The US instituted sui generis protection for this only in 1986. In this law, reciprocity was the basis for protection of mask works originating in other countries partly under bilateral pressure, Japan introduced similar protection in 1987. Subsequent to this efforts were made to conclude a multilateral treaty on this subject under the auspices of the WIPO.

8.4 OPTICAL DISC PIRACY

Digital technology has turned into reality the promise of innovative ways of distributing creative works on a global scale with digital technology, a film enthusiast anywhere in the world can view movies from India, Mexico, or Egypt, and music lovers can download the unique sounds of Russian, Chinese, or Zairian music at the click of a button.

These same technological advances, however, have also given rise to serious forms of piracy. Every industry that depends on copyright protection, including the movie, music, and software industries, is facing tremendous losses from optical disc.

8 Supra 7 - p. 282-283
piracy countries put their economic future in jeopardy when they fail to adequately protect these industries' intellectual property rights (IPR) from both optical disc and traditional forms of piracy. Piracy hinders the development of these industries in many countries and thus discourages potential investors, innovators and the creation of valuable new jobs.

Optical disks include formats such as digital versatile disks (DVD), DVD - Recordable (DVD-R), compact disks (CD), CD-ROM, compact disks with recording cores of dye instead of metal (CD-R), video compact disks (VCD), and laser disks (LD). Optical disks are inexpensive to manufacture and easy to distribute, two features that make them highly vulnerable to piracy. Unlike traditional piracy involving analog technologies, the quality of a digital pirated disc is as high as the original, and a production facility can churn out huge volume of illegal disks in a relatively short time. In 2003, the US motion picture industry, working with law enforcement agencies around the world seized more than 52 million pirated optical disks.

In order to tackle this fast-growing crisis effectively, it is essential to develop and implement innovative tools for controlling piracy at the source of productions. One useful way of doing so would be to adopt optical disc regulations along the lines of the “Effective practices” adopted by government leaders at the APEC (Asia-Pacific Economic Cooperation) Conference in October, 2003.

The “Effective Practices are designed to identify and control all facilities that replicate optical disks by requiring that authorities strictly license optical disc producers and manufacturing equipment. A well-enforced licensing scheme will provide legal grounds for the immediate closure of unlicensed facilities. The regulations also require that licensed optical disc producers retain production records and add source identification codes (SID) to each disc produced measures that will help ensure that licensed facilities are producing only legal optical disks.

We believe that every country whose optical disc production facilities are producing significant quantities of pirated products should create and enforce this type of specialized regulatory framework for controlling the production of optical disks. Pirate syndicates are constantly migrating optical disc production from jurisdictions with anti-piracy regulatory regimes to countries still lacking sufficient protection China, Bulgaria, Malaysia, the Philippines, and Taiwan employ optical disc regulatory regimes and Singapore is in the process of completing a similar system.
The U.S. government is also working with the governments of Russia, Pakistan and Thailand to adopt these vital optical disc regulations.

An increasingly troublesome facet of optical disc piracy is its association with Criminal Organizations. Organized Crime has been quick to realize that piracy, with its potential for high profits and minimal penalties in many countries, is one of the most lucrative and low-risk criminal businesses. Law-enforcement authorities such as Interpol, have identified counterfeiting of optical disks as a valuable source of funding to criminal syndicates and terrorist groups.

An effective means to sever this tie between criminal syndicates and optical disc piracy is the use of laws designed to combat organized crime. The welfare of the copyright industries depends upon the coordinated efforts of all countries to dedicate the same kinds of legal tools to fighting piracy that they bring to other kinds of organized crime. Among others these tools may include money laundering statutes surveillance techniques and revamped organized crime laws.

Pirates aim to be always one step ahead of current regulatory regimes. In order to stem the tide of piracy in an effective manner, it is imperative that governments remain flexible and develop new legal tools on a continuing basis. It is only with a truly international approach – one that adopts and enforces tailored optical disc regulations – that optical disc piracy rates can be significantly diminished on a local and global scale.

8.5 PROTECTION OF TRADEMARKS UNDER TRIPS

Most of the countries have recognized protection of Trademark. The TRIPs agreement marginally raise standard of protection of Trademarks. Both large multinational companies having famous brands, domestic companies benefited through trademark protection. The TRIPs negotiations in the Uruguay Round was ended with lack of effective procedures and remedies for the domestic enforcement of trademarks in some developing countries and in pre-existing international law: The TRIPs fine-tuned detailed standards of protection of trademarks on sixteen different provisions raised in Paris Convention. The TRIPs made compliance with these provisions necessary under its Article 2.1.

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8.5.1 TRADEMARK DISPUTES FLOURISH ON THE INTERNET

When famous marks are used as arbitrary identifiers, trademark conflicts arise. In the mid-1990s, there was a spate of Internet trademark litigations. One case involved use of the name Kaplan (famed for SAT review courses) by arch competitor Princeton Review, Inc (PRI). Although the registration of Kaplan.com by RRI was allegedly a prank, the dispute over its use reached the courts and arbitration. In addition to taking its name for the competitor’s address, Kaplan accused RRI of “urging prospective customers to e-mail ‘KAPLAN’ horror stories’ to us at kaplan.sucks@review.com.” For its part, RRI claimed registration of Kaplan.com broke no law or rule of the Internet. Its objective was to create an electronic brochure and comment on its competitor. The arbitration panel found for Kaplan and forced RRI to relinquish the name.

Kaplan and PRI were not alone. Although initially only a small fraction of the Fortune 500 companies claimed their name as an Internet address as businesses awoke to the importance of Internet sites, parties began fighting to protect their names, including; MTV, Better Business Bureau, Knowledgement.

Trademarks on the Internet pose a legal quicksand for other reasons as well. While famous brand proprietors may have a strong claim to ownership of unique words, owners of a trademark known in a narrow specialty, such as Kaplan, may find their trademarks claimed by similarly named but unrelated parties, quite possibly by total strangers. Because domain names are granted exclusively and nationally, the trademark principle of concurrent use cannot apply in cyberspace.

A related issue is name depletion. Since there can be but one address Kaplan.com, the list of available names can be quickly allocated, forcing firms desirous of using a specific name to seek alternatives. Although simply adding one letter for example, Skaplan, creates an entire different domain site, it may not relieve the trademark problem of likelihood of confusion as to cyberspace sources.

Another issue waiting in the wings is that of trade dress protection for computer screen images. The “look and feel” questions, which have been analyzed in copyright infringement claims, have a trademark corollary. With the US Supreme Court holdings that trade dress and color are each entitled to trademark protection creators of computer screen images may try to protect their display images and screen colors. Core questions raise when seeking to protect screen images will be whether
the screen images are functional whether they establish a distinctive visual impression and whether they have achieved secondary meaning.

In one of the most ironic trademark proceedings in PTO history, two nonprofit groups that were organized to promote the Internet, the Corporation for National Research Initiatives (CNRI) and the Internet Society, brought a trademark cancellation action to recover public use of the word Internet Robert Khan and Vint Cerf Visionaries who worked for the US government during the 1960s when the jumble of federal computers was being organized and personally coined the term Internet from their "internetworking" computers, discovered somewhat by chance that the Trademark office had granted a federal registration for the word internet for banking and publishing services to a company called Internet Inc. Internet, Inc., was owner of the MOST automated teller network and it sought dominion over the word in connection with all banking services. Thus, the men who coined the word Internet and made it part of intellectual property history saved it for all to use.

8.5.2 PROTECTING TRADEMARKS ON THE INTERNET

With the expansion of e-commerce through auction and stand-alone Internet web sites that sell a wide range of products, trademark holders in every country face a daunting enforcement challenge. While legitimate businesses can prosper on the Internet, their survival is threatened by unscrupulous rivals who exploit loopholes to gain unfair advantages, pass off counterfeit goods as legitimate and evade enforcement. Many of these rogue sites, though they appear to be unrelated to each other or to be small operations, easily can achieve gross revenues in the millions of dollars by exploiting weaknesses in current laws and enforcement techniques. An international legal framework to protect legitimate trademark holder on the Internet does not exist yet. As a result enforcement by the private sector and supportive governments requires persistence and vigilance. Governments and rights holders should be aware that they can take steps to protect their marks in an Internet world filled with round the clock sales by sellers from many nations.

We can divide those enforcement strategies into two general areas, one to address auctions sites and another for stand-alone sites. Auction sites present special challenges to enforcement and raise site liability issues (site liability refers to the legal responsibility and culpability of the web site).

10 Arnold P. Lutzker - Comment Rights for Creative Professionals : Copyright and Trademarks in a Digital Age - Edn. 2003, Focal Press USA. PP. 129 & 131-132
Currently, however, the preferred approach is to notify the offending auction site and offer an opportunity to cure the violation by removing the offending offers. If the violation continues, responsible site operators close repeated violators auction accounts.

The process of dealing with web sites selling counterfeit goods can be very time-consuming and, unfortunately deprives the rights holder of immediate relief. Success requires persistence and expertise. The Internet presents special challenges for rights holders since, in many cases, the infringing web sites provide false or incomplete "Registrant" information. This look of accurate information presents a major obstacle to rights holders trying to locate the site and to police the sale of goods on the Internet.

Many legitimate companies employ terms of in-house personnel, specialized software, and out site service providers to locate and track sites selling counterfeit goods. One a rights holder identifies a site offering counterfeit goods for sale, the holder can begin to collect data, ravine databases, and gather who's information, so as to identify those responsible for the site.

Once a site selling counterfeit goods has been identified, however, the rights holder prepares case-and-desist letters and sends them to the Internet Service Provider (ISP) and to the site itself. In most instances, the site will ignore the letter. However, the site is not on notice of violation and can no longer claim ignorance as to its illegal activities.

Typically, ISPs are cooperative when contacted, although, under the current system, they are not required to verify any of the information they collect. Law-abiding ISPs will remove infringing sites from their servers. However, this not the case when the site selling counterfeit products becomes its own ISP and ignores all correspondence. In addition, there are instances of rough ISPs that become safe harbors for infringing sites. The unintentional side effect of cooperative ISPs is that many infringing sites eventually migrate to ISPs located outside the Unites States, where laws differ and ISPs are often less cooperative.

If contacting the site fails and the counterfeiter engages in a game of moving to alternative ISPs, the rights holder may take additional action. The rights holder may do more research and in some instances, hire outside investigators to make purchases that may lead to the source of the items or of the site. These investigations often reveal a variety of sources for the counterfeit goods.
Although many sites are in English and conduct business in U.S. currency, more often than not they operate outside the borders of the United States. In other instances, they collect money in the United States, but ship counterfeit items to the purchasers from overseas locations. This creates additional enforcement problems for the rights holder, who must retain overseas counsel and investigations to advance the investigation. Now the rights holder faces mounting costs and the peculiarities of enforcement in a foreign jurisdiction.

The rights holder may initiate legal action once enough information is gathered. The legal action allows the rights holder to subpoena ISP records related to the operation of the site in question. Often, the ISP records are outdated or no longer available. If the site is part of a larger series of sites under common ownership, it may merit a referral to law enforcement for criminal prosecution. However, given the lack of resources and specialized cyber crimes units, criminal actions represent a small percentage of enforcement actions. The owners of replica sites\(^ {11} \) are acutely aware of this lack of criminal enforcement as well.

The enforcement problems outlined in this article will be reduced only when governments create laws that level and harmonize the internet playing field and support private enforcement efforts. The private sector, in the meantime, must remain committee to pursuing Internet violators\(^ {12} \).

### 8.6 PROTECTION OF UNDISCLOSED INFORMATION: TRADE SECRETS AND TEST DATA

Business confidential information has value because it is not generally known in the trade. Such confidential information will be protected against those who obtain access through improper methods or ways or by a breach of confidence. Infringement of trade secrete is a type of unfair competition.

The key factor in determining whether information constitutes a trader secret is the secrecy of the information, it is critical for companies to develop programs to protect valuable information. There are two ways for companies to protect trade secrete information: physical measures and written agreements.

Acts of competition contrary to honest industrial or commercial practices are considered to be acts of unfair competition. These acts would include passing off

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\(^ {11} \) Replica sites openly sell copies of established or widely coveted goods

\(^ {12} \) Supra 9 – p. 86, 88-89
some other enterprises goods or services ones or misappropriation of a competitor's industrial or business secrets by unfair means. Protection against such acts of unfair competition has long been part of the business law in most countries. It has also long been linked to the protection of intellectual property, more particularly industrial property. The Paris Convention for the Protection of Industrial Property introduced provisions on unfair competition in Article 10 bis as for back as 1900\(^\text{13}\). TRIPs extends this concept specifically to trade secrets and to confidential information relating to test data submitted to government authorities for obtaining the marketing approval for new pharmaceutical and agricultural chemical substances.

8.6.1 PARIS CONVENTION AND UNDISCLOSED INFORMATION

Prior to TRIPs, parties to the Paris Convention had the following obligation under Article 10 bis.

1. The Countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.

2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

3. The following in particular shall be prohibited

   1. all acts of such a nature as to create confusion by any means whatever with the establishment, the good, or the industrial or commercial activities, of a competitor,

   2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or, commercial activities of a computer;

   3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods,

The specific acts prohibited under Article 10 bis (3) do not include the wrongful misappropriation of trade secrets or confidential information. Nevertheless, the protection of industrial and business secrets is implied by the general obligation under Article 10 bis (1) and (2). Thus, even prior to TRIPs, international IP law recognized that acts contrary to honest business practices must be prohibited. TRIPs now makes adherence to Article 10 bis obligator for all WTO members along with other substantive provisions of the Paris Convention (Article 2.1 of TRIPs)\(^\text{14}\).

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\(^{13}\) See Chapter 2, Section F: Protection Against Unfair Competition in WIPO (1998) No. 476(E), Pp. 124-30

\(^{14}\) Supra 7 – Pp. 185-186
8.6.2 PROTECTION OF TRADE SECRETS UNDER TRIPs

The protection of undisclosed information was brought into the TRIPs Agreement under the broader subject of 'unfair competition' as provided in Article 10 bis of the Paris Convention. It is the first time international intellectual property law that this subject is explicitly protected.

Interestingly, the EU in its earliest submission of July, 1988 in the TRIPs negotiations, only wanted a general obligation to protect trade and business secrets against disclosure or use in a manner contrary to honest commercial practices' language that closely tracked Paris 10 bis. Japan did not demand any protection of trade secrets in its submission of November 1987. The US was only major demander of broad protection for trade secrets, including test and other proprietary data. It was not easy to conclude negotiations on this subject not only because some developing countries took the position that trade secrets were not intellectual property, but also because even in the industrialized world there were many differences in the legal systems used for such protection. As we have seen, many common law. Countries do not necessarily have statutory protection for trade secrets as it is possible to provide such protection under tort law, law of contracts or unfair competition. During the negotiations, there was opposition to these provisions, including those on test data, from many Commonwealth countries, like Canada, New Zealand and Australia. Nevertheless, the end results on trade secrets were close to the original US proposals, even while those on test data have many ambiguities15.

8.7 PROTECTION OF TEST DATA UNDER TRIPs

No international law prior to TRIPs contains any provision for the protection of test data or even any other related issue. It is highly unlikely that Article 10 bis of the Paris Convention can be interpreted to cover such a specific obligation.

Article 393 of TRIPs protects test data submitted for obtaining marketing approved of pharmaceutical and agricultural chemical products that utilize new chemical entities, against unfair commercial use with some limited exceptions. However, the TRIPs text evolved quite dramatically over the negotiations. The original demaneur, the US, was, alone in 1987-8 on this issue. The original demands made by the US as contained in its submission of October, 1987 read as follows:

Trade secrets submitted to governments as a requirement to do business shall not be disclosed except in extreme circumstances involving national emergencies or,

15 Supra 7 – P. 191
in the case of public health and safety, provided that such disclosure does not impair actual or potential markets of the submitter or the value of the submitted trade secrets.

Subsequently, by 1990, the US was joined by the EC and Switzerland, Japan still had not agreed to any provisions on trade secrets or on test data. In May 1990, the US articulated its demand on test data as follows:

Contracting parties which require that trade secrets be submitted to carry out governmental functions shall not use the trade secrets for the commercial or competitive benefit of the government or of any person other than the right-holder except with the right holders consent, on payment of the reasonable value of the use, or if a reasonable period of exclusive use is given to the right-holder (emphasis in original).

The EC in an earlier submission of March 1990 had conceded much less than the US demand in stating: contracting parties, which requiring the publication or submission of test or other data the origination of which involves a considerable effort, shall protect such efforts against unfair exploitation by competitors. The protection shall last for a reasonable time commensurate with such efforts, the nature of the data required the expenditure involved in their preparation, and shall take account of the availability of other forms of protection.

Notice that the EC wanted to confine the provision to only test or other data the origination of which involves a considerable effort and not to test data in general. The protection would not extend, as per the EC’s proposal, to exploitation by government but would be limited to that by competitors. Although exclusivity of use was not mentioned, it is clear that the EC favoured such exclusivity for a reasonable period, taking account of several factors to balance public interest with private gain.

In the TRIPs negotiation by the end of 1990, a crucial sentence used in the draft text at Brussels read:
Unless the person submitting the information agrees, the data may not be relied upon for the approval of competing products for a reasonable period of time, generally for no less than five years, commensurate with the efforts involved in the origination of the data, their nature and the expenditure involved in their preparation.

During the negotiations, the purpose of this provision seemed to be to permit a period of market exclusivity for a period, of five years to originators of test data for products utilizing new chemical entities even where these were not eligible for patent protection. One commentator and negotiator of TRIPs has specified that the proposal was meant to cover patent-expired and non-patentable products. However, this was difficult to accept not just for developing countries but also for some developed countries as patent-like protection through market exclusivity would extend to non-patentable products and the proposal was finally modified.

In the end in the TRIPs text there is no clear obligation not to rely on the test data for the second or subsequent applicants nor a fixed duration of market exclusivity, failing which the first registrant is assured reasonable compensation. This is a clear contrast to the corresponding provisions in NAFTA which call for a period of protection of at least five years during which parties cannot rely on the first applicant’s data to approve a second applicant’s request for approval to market a genetic copy of the first applicants’ product. However, even NAFTA allows, in certain cases, the implementation of abbreviated approval procedures on the basis of bioequivalence and bioavailability studies. Indeed, the US FDA uses such abbreviated procedures to clear applications for the marketing approval of generic versions of patent-expired products16.

8.8 LIMITS TO INTELLECTUAL PROPERTY PROTECTION IN TRIPs

All intellectual property rights (IPRs) can be broadly held to confer a right to exclude others from certain unauthorized acts with respect to the subject matter of protection. These rights are conferred under national law for the purpose of encouraging inventive or creative activity or preventing consumer deception and unfair competition. In the context of the TRIPs Agreement, IPRs that directly reflect the objective of encouraging creative or inventive activity include patents, copyright related rights industrial designs and layout-designs. Those primarily intended to prevent information asymmetries and consumer deception include trademarks and geographical indications. Usually the former category of IPRs is meant to confer

16 Supra 7 – Pp 197-199
market power through legal exclusivity, albeit limited in time and scope. Consequently these rights are subject to stricter exceptions to protection than the latter categories. This is because society recognizes that public interest or welfare may suffer with the grant of this limited market power for the term of protection.17

On the other hand, trademarks and geographical indications are not generally subject to many exceptions as they only prevent the use of the same distinctive sign but do not prevent the production use or sale of a similar good or service under a different mark, so long as there is no consumer deception with respect to the source of the product.

Clearly the exceptions to the first category of IPRs cannot be such that the objective of rewarding creative and inventive activity would itself be defeated. Pre-TRIPs international IP law, such as the Paris Convention and the Berne Convention recognized the need to set the boundaries to these exceptions to IPRs. TRIPs non-clarifies these boundaries even further particularly on industrial property. The duration and scope of these rights have been fixed and limitations imposed on exceptions to such rights. Section 5 explains the exceptions to the exclusive rights conferred by IPRs. Much of Section 5 is devoted to limits to patent rights, where the focus of the discussion is primarily on use without authorization of the patentee i.e. compulsory licenses and government use. These limits to IPRs were of crucial importance to developing country negotiators but the final agreement, could not have been reached in the TRIPs negotiations without crucial support from some developed countries.18

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17 See for example, estimates of welfare losses for India with the introduction of product patents and the attenuating effects of some policy options in Watal (2000a)
18 Supra 7 – Pp. 291-292
8.9 Threat to Human Rights

The concept of human rights signifies the basic dignity and worth of the human beings and his or her most fundamental element. The denial of human rights not only hit personal or private rights but also affect society and political situation and plants seeds of violence and conflict within and between societies and nations. The League of Nations U.N.O., laid stress for the protection of human rights. The human society responded and stood against all inhuman activities, systems, rules oppression and all forms of domination coming mainly from superior corrupt social economic and political powers.

The concept of human rights, at one time indulgently looked upon as the impracticable dream of natural law philosophers, has became in the course of these four decades an international reality. But problem remain the application, implementation and protection of human rights. A considerable degree of intellectual confusion prevails among poetical scientists and international lawyers in adequately formulating the more fundamental problems, and in performing the necessary intellectual tasks relating to establishing and maintaining appropriate constitutive processes and public order policies. The principal difficulty lies in the non-availability of an adequate substantive definition of human rights. The definition provided by Richard Wasserstrom reflecting the common general understanding of the concept, that “one ought to be able to claim as entitlements (that is, as human rights) those minimal things without which it is impossible to develop one’s capabilities and to live life as a human being”. In that context, referring to the doubt raised on whether economic, social and cultural rights can be classified as human rights, some commentators concerning about definition imprecision, unenforceability, unmanageability of the concept as a whole, and the difficulty of achieving the full justifiability of the rights in question. Similarly problems arise in relation to the “third-generation” rights. Described as the rights of “problem”, their claim to be considered as human rights are doubted because, as Paul Sieghart points out, they “cannot belong to any identifiable individuals”.

19 The International Law Association Wars : A Conference
Sometimes human rights are conceived in terms of natural law absolutes and buttressed by trans-empirical justifications, both theological and metaphysical. At other times, human rights are defined in terms of the demands made by individuals or groups at particular times within their particular communities. Human rights may also often be confined to the particular rights which the ruling system of law in the state will protect. Human rights may, further be defined solely by reference to a larger regional or global community context. The problem often arises because of difference in approach and perspective, for instance whether the concept of human rights is related to the Natural Law approach, the Historical approach, the positive approach or the Marxist approach.

According to Dr. Durga Das Basu, “the expression human rights had its origin in international law relating to the development of the status of an individual in the international legal system, which was originally confined to the relation between sovereign states, who were regarded as the only person in international law. Thus the concept of human rights, embodying the minimum rights of an individual versus his own state is as old as political philosophy”.

Thoms Hobbes (1588-1679) in U.K. and John Looke (1632-1704) advocated for the same set of rights in new name the natural Rights. “The individual retained the natural rights to life liberty and estate for they were the natural and inalienable rights of man ……. The purpose of government was to protect these it has no other end than “to preserve the members of that Society in their lives, liberties and possessions. As Locke put it all this limited to the public good of the society. So long as government fulfils this purpose, its laws should be binding when it ceases to protect or beings to encroach on these ‘natural rights’ laws lose their validity and the government may be overthrown”.

The General Assembly proclaims the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this declaration constantly in mind shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and effective recognition and observance, both among the peoples of member states themselves and among the peoples of territories under their jurisdiction and includes Articles 1 to 29. The other documents like International covenant for protection civil and political rights (ICPR)

21 Dr. Gokulesh Sharma - Human Rights And Legal Remedies – (Deep & Deep Publications Pvt. Ltd.) 2003 – Pgs. 4-6
22 RWM Dias – jurisprudence – 1985 – Butterworth & Co., USA, P-82
and social and economic Rights (ICESC) were made in 1966 and other instruments also came to be recognized right to, life and personal liberty under Article 3 UDHR Art.6, Right to Privacy etc. UDHR, Right to Privacy under Art. 12 UDHR ; Article 17 – ICPR.

Right to Speech & expression under Art 19 UDHR ; Art. 19 – ICPR, Right to property under Art. 17 – UDHR. The other documents like International Covenant for protection Civil and political rights (ICPR) and social and economic Rights (ICESC) were made in 1966.

In India, various kinds of human rights provisions are in force today. Broadly speaking, these national human rights provisions may be divided in two broad categories which are as follows:

1. Constitutional provisions,

2. Statutory provisions

Constitutional provisions of human rights are those provisions which arise from the constitution itself. It shall not be wrong to say that each and every article of the constitution create human rights. But there are certain very important provisions for the purpose of human rights.

Statutory provisions are those provisions which have been driven from various enactments of Central and State Governments protection of Civil Rights Act, protection of Human Rights Act and other important acts.

The natural right or human rights included under part III of the Constitution, Fundamental Right under Art. 14-30 which provide for equality (Art. 14), nondiscrimination (Arts. 15, 16, 17), six basic freedoms like speech and expression, peaceful association, movement resident (livelihood Art. 19 etc., right to life and Personal liberty u/Art. 21 and Some other articles. In cyber-space the intrusion and damage caused by hackers and among such other wrongs has been serious concern to privacy, security and property right on the one hand but on the other hand, the law enforcement agencies are becoming over aggressive to encroach the freedom of speech, expression and communication among the people. The question intrusion, interception and surveillance have been equally injurious to the people.

However, the main issues in the cyber space as to Human Rights have been privacy, freedom of speech and expression, right to property and right to communicate with others beyond national boundary. “There are many private

23 Supra 21 – Pp. 317 – 318
activities that are being carried out through the medium of internet. Merely because it is being carried out in the Internet does it lose its private character?

8.9.1 **HUMAN RIGHTS ISSUES IN CYBER SPACE**

Some of the burning questions in cyber space in this subject are privacy, freedom of speech and expression, communication and right to property the issue on the right to privacy has become very complicated due to the fact that will motivate through natural anonymity in the Internet, application of cryptography, using devices like anonymous remailer etc. The illegal intrusion, interception surveillance by hackers also creates a threat to privacy of data resources in the cyber space.

8.9.2 **Microsoft Research Reveals New Trends in Cyber crime.**

Greater intra-organizational planning and collaboration needed as security and privacy threats converge. SAN FRANCISCO and LONDON – Oct. 23, 2007 – Microsoft Corp. today released research showing acceleration in the number of security attacks designed to steal personal information or trick people into providing it through social engineering. Microsoft’s most recent Security Intelligence Report, a comprehensive analysis of the threat landscape, shows that attackers are increasingly targeting personal information to make a profit and threatening to impact peoples privacy. The report found that during the first half of 2007, 31.6 million phishing scams were detected, an increase of more than 150 per cent over the previous six months. The study also shows a 500 per cent increase in Trojans, password stealers, keyboard loggers and other malware on users’ systems. Two notable families of Trojans detected and removed by the Microsoft Malicious Software Removal Tool are specifically targeted at stealing data and banking information. Microsoft also released findings from a recent survey of more than 3600 security, privacy and marketing executives across a variety of industries in the United States, the United Kingdom and Germany, including financial services healthcare, technology and government conducted by the Ponemon Institute LLC, the study found that as security threats increasingly target personal information move collaboration among security and privacy officers is critical to avoid costly compromise or breaches of personal information.\(^{24}\)

\(^{24}\) Report : On Violation of Human Rights, Published by Microsoft Corp. on Oct. 23, 2007 – San Francisco and London : Source : Internet
SECURITY AND PRIVACY THREATS COVERAGE UNDER NEW ATTACKS

As more people communicate, access and share information online and the delivery of services and information becomes more personalized, organizations are collecting larger amounts of personal information to provide services to customers. Increasingly, organizations need to share information and conduct business across borders and devices, and with a wide range of internal and external stakeholders. For cyber criminals, these factors represent greater opportunities to steal personal information.

"As the security of the operating system improves, we are seeing cyber criminals becoming more sophisticated, diverse and targeted in their methods of stealing personal information", Fathi said. 'Personal information is the currency of crime and malicious attackers are targeting it to make their cyber attacks and other scams more authentic, credible and successful, and to make a profit".

According to the latest report, released today, during the first half of 2007, there was a growing number of security attacks by Trojans, which often target personal information, and an upward trend in the use of mailware to compromise the privacy and security of user machines. In the same time period, backdoors, a category that includes bots, posed the most significantly increasing threat to instant messaging users as attackers continue to use them to control systems and violate user privacy\textsuperscript{25} (source: Internet: \texttt{www.google.com}).

The new information technological are breaking down the realms of what is private and what is public. Around the world, when individuals in private do acts that would result in possible criminal sanctions, there usually is little or no regulation of such activities. Examples include indulging in various forms of obscenity, expressing racial or ethnic hatred, through idle – conversation, breaching the privacy of other individuals .............. If they are regulated or stopped, it affects the right to freedom of expression. If allowed to continue, it may affect some other freedoms of some other group of people. How to balance these conflicting interest is posing a problem from governments as well as human rights organizations\textsuperscript{26}.

The right associated with the freedom of speech and expression has three risk zones in the IT Act.

1. **Interception and monitoring by the ISP – Monitoring Centre – The Government of India has issued one guideline for ISPs – and asked the ISP to install monitoring device to be used by the law enforcement as and when necessary**

\textsuperscript{25} Source Internet : \texttt{www.google.com}

\textsuperscript{26} S.V. Joga Rao : Law of Cyber Crimes & Information Technology Law – 2004 – P 241
2. Encryption key has been limited to 40 bit key length by some ISP guideline and has required that for higher key length—permission of Telecom Authority is required.

3. The provision u/s 67 of the Information Technology Act provides for obscene materials in cyber space. The obscenity has remained an issue with no clear definition and precise concept for universal application. Moreover the rule of the freedom at the source also finds some difficulty in this provision.

The question of privacy in communication has been an issue of great debate at international level. The I.T. Act has to a great extent encroached into this private area of individuals.

Section 69 of the I.T. Act empowers the controller, if he is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, the security of the state, friendly relations with foreign states or public order, to intercept any information transmitted through any computer system of computer network..

8.9.3 HUMAN RIGHTS AND INTELLECTUAL PROPERTY

Human rights and intellectual property protection are two distinct fields that have largely evolved separately. Their relationship needs to be re-examined for a number of reasons. First, the impacts of intellectual property rights on the realization of human rights such as the right to health have become much more visible following the adoption of the TRIPs Agreement. Second, the increasing importance of intellectual property rights has led to the need for clarifying the scope of human rights provisions protecting individual contributions to knowledge. Third, a number of new challenges need to be addressed concerning contributions to knowledge, which cannot effectively be protected under existing intellectual property rights regimes.

Human rights and intellectual property rights are, to a large extent, fields of law that have evolved independently. On the one hand, intellectual property rights consist of statutorily recognized rights, which provide incentives for the participation of the private sector in certain fields and seek to contribute to technological development. Intellectual property rights, such as patents are near monopoly rights. This monopoly is offered by society in return for certain concessions such as information disclosure and a limited duration of the rights granted. On the other hand,
human rights are more than fundamental rights, which are recognized by the state but are inherent rights linked to human dignity.

Different kinds of links between intellectual property rights and human rights can be identified. For example, patent laws recognize that there is a socio-economic dimension to the rights granted and that a balance must be struck between the interests of the patent holder and the broader interests of society. Intellectual property, rights also have direct and indirect impacts on the realization of human rights. For example, intellectual property rights include economic and moral elements. The latter can be linked to certain aspects of human rights. Finally, human rights treaties recognize certain rights pertaining to science and technology.

The links between intellectual property rights and human rights have been acknowledged for many decades, as exemplified in the Science and Technology related provisions of the Universal Declaration of Human Rights. Nevertheless, the main debate concerning the links between human rights and property rights focused for a long time on real property rights rather than intellectual property rights. The adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and its implications for developing countries have fundamentally changed the nature of the debate concerning intellectual property rights and human rights. This shift is demonstrated in three ways. First, the possible impacts of the introduction or strengthening of intellectual property rights standards on the realization of human rights have been exemplified by the crisis over access to HIV/AIDS medicines (in Sub-Sahara African countries in particular). Second, there has been renewed debate over the introduction of intellectual property in fundamental bills of rights at the national or regional level. Third, at the UN level, there has been renewed interest in the science-related provisions of Article 15(1) of the International Covenant of Economic Social and Cultural Rights (ICES CR).

8.9.4 INTELLECTUAL PROPERTY IN HUMAN RIGHTS INSTRUMENTS

The place of private property rights in human rights treaties and bills of rights have been controversial for decades. On the one hand, property has been claimed as a fundamental right. Jakob Cornides Human Rights and Intellectual Property : Conflict or Convergence ? J. WORLD INTELL. PROP. 135 (2004). On the other hand, finding a consensus around the notion of a fundamental right to property has never been possible. This is due to at least two broad factors. First, where human

27 See, e.g., Declaration des Droits de l'Homme et du Citoyen Annex, Constitution de la Republique Francaise (Constitution du 4 October 1958)
rights are seen as rights that are inherent to human being by virtue of their humanity, it is not possible to include the right to property as a human right. Second, there were and remain debates concerning the place of property rights in society. For a long time these debates took place in the context of a broader ideological discourse, which played out during the cold war. Even though most communist regimes have been dismantled, there remain significantly different perspectives around the world concerning the place of property rights in the legal system.

More specifically, a number of elements can be highlighted against and in favour of the protection of property as a human right. On the positive side, property rights are deemed to foster security, to provide protection of the individuals' autonomy, to provide a basis for partition in a democratic society, and are seen as conducive to the protection of other human rights such as the right to privacy. On the negative side, private property rights may constitute a source of inequality and condone existing ownership patterns without taking into account their legitimacy. Therefore, property rights tend to contribute to maintaining the status quo of a very unequal distribution of wealth. From a different perspective, it may be asked whether all types of property can or should fall within the scope of human rights protection. The human rights instruments like the Universal Declaration treat real property and intellectual property separately. Thus, while property rights are addressed at Article 17, culture and science come up at Article 27 in the context of the Socio-economic rights recognized in the Universal Declaration. Further, the right to property was not included in the ICESCR, while the rights recognized under Article 27 were substantially incorporated in Article 15(1) of the covenant.

Even though the link between intellectual property rights and human rights is tenuous, this does not imply that there is no connection between human rights and intellectual contributions. On the one hand, existing intellectual property rights have the potential to affect the realization of human rights such as the right to health. On the other hand, it is possible to understand existing science and technology provisions in human rights treaties, not as providing a link to existing intellectual property rights but as providing a basis for the recognition of the non-economic aspects of intellectual

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28 cf. Orit Fischman Afori, Human Rights and Copyright: The Introduction of Natural Law Considerations into American copyright Law, 14, FORDHAM INTELL PROP. MEDIA & ENT. L.J.
endeavour. It can be argued that this is in fact what was sought in the context of the adoption of the relevant clauses in the Universal Declaration and the ICESCR. This also constitutes the most sensible interpretation of these clauses in the context of today’s debates over the protection of traditional knowledge.

8.9.5 INTELLECTUAL PROPERTY RIGHTS AND THE REALIZATION OF HUMAN RIGHTS

Intellectual property rights largely evolved as a distinct field of law for most of their history. This was due in part to the perception that rights like patents made a specific contribution towards economic and technological development. The links between the incentives granted through the patent system and its broader impacts on society were only superficially addressed. Nevertheless, the basis of patent rights is a balance between the interests of society at large in technological and economic development and the rights granted to individual inventors. This is linked to the fact that there has always been a tension inherent in the patent system between the promotion of competitiveness for economic development in capitalist economies and the introduction of near monopoly rights to ensure similar aims in certain specific fields.

It has therefore, always been recognized that a balance should be struck between the rights granted to patent holders and the broader interests of society. In other words, socio-economic concerns, constitute an integral part of patent laws and treaties. This emphasis on socio-economic concerns is limited by the context within which they are introduced. Patent laws focus on the rights of patent holders and the interests of everyone else.

The relative isolation of intellectual property rights from broader debates concerning their impact on the realization of human rights or on environmental conservation has ended following the adoption of the TRIPs Agreement, whose main impact has been to substantially raise intellectual property rights standards in a majority of developing countries. In the context of a majority of developing

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32 DUNCAN MATTHEWS, GLOBALISING INTELLECTUAL PROPERTY RIGHTS : THE TRIPs AGREEMENT (2002)
countries, and probably all least developed countries, the implementation of the TRIPs Agreement has the potential to have significant impacts on the realization of human rights. The link between patent protection and the realization of human rights is not now per se, but it has been made much more palpable following the adoption of the TRIPs Agreement. Most developing countries have had and are having to quickly adopt intellectual property rights standards which have the potential to trigger significant socio-economic disruption. This was probably never so visible in developed countries, where the strengthening of patent protection has largely been incoremental.

CONCLUDING COMMENTS:

This Chapter concentrates on the international Intellectual Property Treaties and Human Rights. One of the most far reaching example of an attempt at uniform treatment of trademark owners and international trademarks law, and creation of a multinational regime governing intellectual property rights was the Paris Convention for the protection of Industrial property of March 20, 1883. The Paris Convention became effective on March 7, 1884. In addition to the Paris Convention, nations have adopted other treaties of a limited bilateral or multilateral nature. The other treaties and agreements for the Intellectual Property are, the treaty between France and Italy, the Benelux Treaty, the Madrid Agreement, the North American Free Trade Agreement(NAFTA), Trade Related Intellectual Property Rights(TRIPs) in GATT.

Computer Programs are protectable under Copyright law and can be registered with the copyright office as literary works. TRIPs made significant progress over pre-existing international copyright law in clarifying that computer programs should be protected as literary works. The Berne Convention, in Article I, defines the objective of the Berne Union as the protection of the rights of authors in their literary and artistic works. India already protected computer software as a literary work in its Copyright law from as far back as 1983. Article 39 of the TRIPs Agreement has led to international acceptance of a minimum standard for the legal protection of undisclosed information.

The concept of Human Rights signifies the basic dignity and worth of the human beings and his or her most fundamental element. The denial of human rights not only hit personal or private

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34 THEO R.G. VAN BANNING. The Human Right To Property – 2002 - P. 412 – 413)
rights but also affects the society at large. The League of Nations, U.N.O, laid stress for the protection of human rights. The human rights are violating in the cyber space. Some of the burning questions in cyber space are privacy, freedom of speech and expression, communication and right to property (intangible). The links between intellectual property rights and human rights have been acknowledged for many decades, as exemplified in the Science and Technology related provisions of the Universal Declaration of Human Rights. The adoption of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) and its implications for developing countries have fundamentally changed the nature of the debate concerning intellectual property rights and human rights.