

**Forum:** General Assembly Third Committee

**Issue:** Protecting intellectual property rights in the digital age

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## Introduction

Intellectual Property (from now referred to as IP), “deriving from the work of the mind or intellect” (Merriam Webster, 2019), protects both tangible and intangible products based off creativity with the objective of protecting and maximizing the rights of producers and people who dedicate their time and effort in creating original innovations. Direct benefits of IP include and are not limited to: differentiating businesses from potential competitors, ensuring revenue streams, and establishing valuable assets for further secure investment. Typical forms of IP include patent, trademark, design protection, service mark, and trade secret protection. Ensuring that IPs are being properly respected and followed is crucial. Protection of any piece of invention provides credit for the original owner, so that he or she is able to obtain complete benefit, which simultaneously encourages more creative minds to generate innovations rather than keeping knowledge in the field of research and development (United States of America Department of Commerce, 2016). Aside from rewarding entrepreneurs, IP also fosters the generation of solutions to global challenges, supports high-paying jobs, and drives economic growth and healthy competition (Global Innovation Policy Center, 2019). However, not all nations address IP’s importance in the same way and carry legal enforcements to the same extent, which creates international disputes. With digital advancement, this problem becomes even more intricate to solve. Under the circumstance that IP is already difficult to enforce, the digital world provides easier methods for an even wider audience to offend the rights of the original creator, both intentional and unintentional, through ways such as but not limiting to unauthorized videotaping and downloading. Through debating this question, all delegations will collaborate to achieve the objective of exploring a new balance between rights of information producers and freedom of access for a wider population.

## Definition of Key Terms

### Copyright

Copyright is the type of IP that provides legal right to reproduce, publish, sell, or distribute a produce that usually takes forms of literary prints, artistic works, and recordings (Merriam Webster, 2019). Commonly, it only protects the product’s physical form rather than its concepts. Copyright duration varies according to different governments. Generally, copyright protection for all products excluding sound recordings, broadcasts, and

typographical documents lasts throughout the creator's lifetime with an at least an additional 50 years (varies) after his or her death (copyrighthouse.org, 2019).

## **Design Protection**

Design Protection is a general IP that applies to any product distinctly functional for its appearance, such as clothing design and patterns applied (prv.se, 2019).

## **Intellectual Property**

Intellectual Property, IP, refers to a legal measure of protection for a piece of property (such as an idea, invention, or process) that derives from the work of the mind or intellect, protecting tangible and intangible products and goods depending on different existing types.

## **Intellectual Property Insurance**

Intellectual Property insurance, or IP insurance, is the cost covering legal proceedings and reinforcing laws over IP disputes. IPs are costly to register, and the pressure increases even more when owners need to defend their rights against IP violators. Policies under IP insurance need to be purchased specifically according to cases (legalvision.com.au, 2016). Patent insurances can be used interchangeably with IP insurance, but not all IP insurances cover patent reinforcement. This insurance can be withdrawn by the insurer (foundersshield.com, 2019).

## **Intellectual Property Theft**

Intellectual Property theft, or IP theft, is the violation of the original author's work without legal consent, applying to any form of violation to any of the IP types. IP theft occurs because it is easy to achieve and the result is highly profitable. IP theft steals taxation revenue and supports organized crime (upcounsel.com, 2019).

## **Patent**

Patent is the type of IP that grants legal protection to creators from unauthorized uses for a limited period, with the aim of ensuring invention disclosure (Merriam Webster, 2019). Patent falls under the control of civil laws. Specific terms of patents vary across nations, and, unlike copyright, there exists no common agreement on its effective duration. Therefore, please refer to effective patent terms specifically pertaining to the delegation.

## **Service Mark**

Service mark is a device used to identify and protect a service of any form, such as transportation and insurance (Merriam Webster, 2019).

## **Trademark**

Trademark is a type of IP that registers a device that points "distinctly to the origin or ownership of merchandise to which it is applied and legally reserved to the exclusive use of the owner as maker or seller" (Merriam Webster, 2019). In simpler terms, this type of IP is applied to a symbol, logo, or an attributive representation to

distinguish a company's product from similar ones in the market. The Apple Logo, for instance, is considered a registered trademark.

## Trade Secret

Trade secret is a type of IP maintained in the form of formula, practice, design, and information compilation that has economic value for a business body (Merriam Webster, 2019). Properties under this IP are intentionally kept secret so that owners obtain further relative advantage over competitors.

## Background

Such notion of protecting intellectual creations dates back into ancient Greece, gradually takes form beginning from the sixteenth century, and eventually develops itself into a systematic process known as "Intellectual Property", currently buttressed by the World Intellectual Property Organization (WIPO). But technological advancement, namely the internet, redefines the scope of discussions regarding IP protection.

### Why is IP protection hard to enforce?

The respect towards IP is established on the foundation that the general acceptance of the audience. IP imposes legal protection over a product so that other people may not utilize this product without consent from the original creator. Consent usually comes in forms of monetary bonds and contracts. This said, committing IP theft is a profitable way to avoid legal and financial boundaries while obtaining the equivalent information. Also, some people consider the mere concept of "protecting knowledge" a theft, because there shouldn't be boundaries for access of knowledge, and that a piece of knowledge is a part of the common property of the entire public rather than that of a privileged individual. Even with legal processes, these diverging mindsets among the public hinder proper implementation (upcounsel.com, 2019).

### Is the classical IP system obsolete in a data-driven world?

Existing IP laws are drafted primarily during the Industrial Revolution due to a rise in creative innovation and demands for legal protection. The major question is to re-evaluate the usefulness of these laws, so that they maximize the promotion of extensive innovation. Economic statistics show that the digitalizing world is involving itself with more IP usage, implying that the classical model is not yet outdated. However, users need to consider further strategies of protection. To what extent is this existing model promoting the old industrial economy. Can it be integrated into improving a digital economy? What happens if advanced technologies, such as AI, are introduced to the market and produce works, so that information become more abundant and transparent (WIPO, 2019)?

### What are the challenges to inheriting IP protection in the digital age?

Referring to the Universal Declaration of Human Rights (Article 12), privacy is considered a human right. The digital age has enabled further convenience in finding new pathways for unauthorized usage of products and

violation of IP protection. IP laws are difficult to summarize in the length of this guide, but below are the five main barriers in achieving IP protection in the digital social environment (Muir, 2016).

First, considering that the internet provides worldwide service for all users, it can easily recreate and distribute a piece of digitalized asset to various databases across the globe. The internet, therefore, becomes a loophole in legal control because what one country considers to be IP theft may be seen as completely legal in another. When IP is digitalized, jurisdictional conflicts arise. After all, IP law is considered one of the most fluid areas of law and there is no such thing as “universal IP law”.

Second, costly and complex physical reproductions of IP in the past is replaced by digitalized assets that can be easily, cheaply, and infinitely reproduced. The internet, therefore, results in unrestricted infringements of IP. The digital world lowers the requirement for intellectual theft, so that anyone can be committing it.

Third, the digital age enables easier distribution of reproduced intellectual goods. With the internet, unknown personnel are able to download unauthorized documents with a simple entrance on the webpage. With this vast web, it is almost impossible to control the titanic number of infringed properties, such as photos, videos, and documents, not to mention social media applications can deteriorate this process.

Fourth, even if IP theft is identified, it is difficult to exert penalty on specific individuals. As IP theft can as likely be committed by individuals in ways such as but not limiting to movie torrents, it is almost impossible to track down each and every person who has violated IP rights in ways such as but not limiting to illegally streaming movies, downloading video games, textbooks and music. In the US, the National Association of Theatre Owners (NATO) had lobbied with federal departments and passed laws criminalizing camcorder theft in movie theatres and protecting individuals reinforcing movie IP (Brenneman, 2019). However, due to the massive population of infringers, this law was eventually proven ineffective. Anonymity on the internet acts as a camouflage for IP infringers, so that their true identities are hidden and cannot be tracked. Additionally, IP theft can be committed unintentionally out of ignorance and lack of awareness. In fact, many people are unaware that their simple action of clicking into a video clip, or downloading a textbook for research, is considered to be piracy.

Other factors must also be considered. For instance, taxation and its feasible implementation needs to be further negotiated at an international level. Furthermore, in keeping up with the digital age, how will information provided by non-human entities be adapted to existing laws? Should the action of importing information into a machine for it to self-learn and produce more information a violation to the existing IP (Gurry, 2019)?

## **Major Parties Involved**

### **India**

India is described as having “longstanding deficiencies” in its IP framework, according to the US. Unresolved measurements over copyright, patents, trade secret and enforcements affect the US right holders negatively, hence

resulting India being listed as one on the US' "blacklist". Technological IP theft is a main problem on India's side of the accusation, as a vastly expanding country that contributes greatly to world economy (India New England News, 2019).

## People's Republic of China

In a 2017 report conducted by the United States Chamber of Commerce, China was ranked 27th, out of 45 countries indicated, for its degree of compliance with IP laws. Basic IP laws are ensured in China. Still, China as a rising MEDC faces accusation of severe IP theft primarily from the USA. According to a reported conducted by the United States Trade Representative (USTR) in 2018, China is responsible for stealing US IP equivalent to \$180 billion to \$540 billion (Pham, 2018). In August 2019, People's Daily published an article defending China's contribution in resolving IP lawsuits, that the nation is "highly praised by the international community", that "no country is perfect at protecting IPR", and that it "saves more time and cost to fight a lawsuit (IP-related) in China than in the US". "China has both the ability to create intellectual property rights and the determination and actions to protect them" (Zhong, 2019).

## United States of America

The US, in the "Special 301" Report conducted by the USTR, produced a blacklist with 11 nations committing IP theft toward US property: Algeria, Argentina, Chile, China, India, Indonesia, Kuwait, Russia, Saudi Arabia, Ukraine and Venezuela. Under the Trump administration, IP theft becomes a key factor that sparks the international "trade war". While China publically announces its incremental progression in improving IP laws, the US accuses China for more IP theft. For instance, it is said that one in every five US companies claimed that China had stolen its IP (Sherman, 2019). In 2018, President Trump issued a \$30 billion "China IP theft tariff".

## World Intellectual Property Organization (WIPO)

The world Intellectual Property Organization (WIPO) is a global platform for IP policy, services, and information forums. A self-funding agency under the United Nations, WIPO aims to lead the development of a balanced and effective international IP system. It provides strategic directions, protection of IP, technical support, and international cooperation opportunities for its 192 members states and establishes agendas and evaluations regularly. Current WIPO director is Francis Gurry (WIPO, 2019).

## Timeline of Events

Date	Description of event
<b>March 20, 1883</b>	Paris Convention for the Protection of Industrial Property was held, first of its kind to protect creator rights on products used both domestically and internationally.

<b>September 6, 1886</b>	Berne Convention took place, agreeing that credit and payment must be given to writers producing works with artistic significance, such as novels, poems, short stories, plays, songs, musicals, artworks, sculptures and architectures.
<b>April 14, 1891</b>	Madrid Agreement was reached, with this agreement followed the official launching of the first international IP filing service.
<b>1893</b>	United International Bureau for the Protection of Intellectual Property (BIRPI) was established to administer the previous agreements.
<b>1970</b>	BIRPI became World Intellectual Property Organization (WIPO), state-led intergovernmental organization, based in Geneva, Switzerland.
<b>1974</b>	WIPO joined the United Nations.

## Previous Attempts to Resolve the Issue

Attempts taken to resolve IP conflicts can be classified into three groups: political, economic, and social. Seen that measures taken to enforce IP rights overlap, listed below are the three most common attempts taken previously to resolve and prevent IP disputes.

- **IP Tariff**

Countries, like the US, impose tariff on IPs and products from other countries if they suspect them of IP theft. This, however, is a pessimistic approach. Under the circumstance that these actions are not based on a protectionist approach, IP tariff harms both domestic and global economy by creating a negative inflow of IP trades transmissions. Rather than settling IP disputes with WIPO, imposing tariff to “sanction” another country is also a violation to international agreements, hence causes further political disagreements (Fan, Wang, 2018).

- **Raising Awareness**

The intention for raising awareness is to inform the public so that members of the society can establish moral righteousness and will at least not intentionally commit IP theft. Raising awareness on giving credit for the original author can be seen in schools, in which students are taught not to plagiarize (Heinrich, 2012). However, in the face of complex legal procedures and profitable monetary rewards, people are constantly in search of easier ways to acquire profit while avoiding legal responsibilities. Moral persuasion, without practical enforcement and substantial punishment, is virtually useless.

- **Technical Protection Service (TPS)**

Establishing TPSs, such as verifying authenticity, collecting user information, and encryption, can assist to control the distribution of data through the internet. Separation of accessible regions through coding and translation using allocated private-public keys also assist creating protection against unlimited data access. However, technological enforcements only assist IP laws, but cannot answer further questions over social, legal, and economic questions once they arise and ensue. Even more, TPSs are not yet comprehensive enough

to be compatible across government requirements (National Research Council, 2000). Nevertheless, TPSs, properly established based on legal circumstances according to different nations' requirements, are effective and can become prospective measures in future development.

## Possible Solutions

- The reason IP disputes exist internationally is that nations cannot come down to an universal agreement on IP laws. What is more, because chances to establish a comprehensive universal law are slim, there are grey areas in the legal realm in which an action is considered IP theft in one region and not such case in another. Therefore, if establishing a set of universally agreed laws is unfeasible, can such laws be unified by economic structures, regions, or continents under the supervision of the UN?
- When a company registers IP for its product, how will it recognize and be informed of legal frameworks suitable for each nation? What measurements are taken when a company desires to transfer its IP to another country for more business benefits?
- What goes into the regional law needs to be specific. Are there certain criteria that serve as scales to classify a dispute as IP theft? If IP theft occurs in cross-continental areas, how will the location for settling such dispute be determined? In any case, clear and public reports should be made when reporting IP infringements. Also, it might be necessary to consider if the manufacturing process requires monitoring in the first place. In a manufacturing industry, if an employee is only given a compartmentalized duty, the chance that this employee can reproduce the entire product diminishes, for only the designer knows the full process for production.
- China holds the Chinese Export Commodities Fair in Canton annually, and held an additional fair in Shanghai in fall, 2019. Similar fairs can also be made compulsory for every nation, and WIPO can send monitors to such fairs for inspection, making sure that there are no counterfeiters.
- Technology is key. Fully utilize technology to inspect new lists registered IP to identify infringement.
- Considering that people may commit IP theft unintentionally, meaning that they are unaware that their action is illegal, can and should such case receive different punishment as intentional IP theft? Or should the law see everyone equal?
- Attempts for raising awareness are seen in school-based education, in which students are taught not to plagiarize. But taking others' work is simply easier. Should education on anti-plagiarism be forwarded, as in beginning from the time that students start receiving education?

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## Appendix or Appendices

- I. <https://www.wipo.int/export/sites/www/about-ip/en/iprm/pdf/ch4.pdf> (WIPO IP Handbook: Policy, Law, and Use)

*If interested, please read the official WIPO handbook on IP law expectations. It provides details on the services provided by WIPO to enforce IP rights, which you may find inspiring when drafting new resolutions.*