ILS Centre for International Law Newsletter

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The Hurdle of Compulsory Licensing on the Access to Medicines

- Arya Mitkari (II B.A.LL.B.)

Human Rights law includes the term the right to health and addresses it as a fundamental right. This Right is under threat due to the high prices charged by pharmaceutical corporations. States' inability to develop cheap drugs adds to this. States and companies have a duty towards society to provide its people with efficient drugs. This Access is currently being affected by the high prices charged by large pharmaceutical corporations, which is being warranted by the Trade Related Intellectual Property Rights (TRIPS).

Developing countries today are facing a wide range of issues in the pharmaceutical field. The major issue at stake is their inability to develop new medicines. Only a few developing countries, like India, Brazil, etc. have the resources and the potential to reverse engineer the newly developed medicines by the West. Art. 31 (f) of the agreement restricts the use of compulsory licensing for supplying the domestic market only, thus preventing its use for export purposes.

Compulsory License is an authorization granted by the Government to a third party to produce a patented product without the consent of the patent owner. They are granted under certain circumstances, such as public health emergencies and will only be granted when the company in the past has made reasonable attempts to negotiate for a voluntary licence, under reasonable commercial terms. This clause unnecessarily makes it difficult to get access to vital medications.

The term "emergency" in this context has been left open for interpretation and thus the countries have absolute discretion in determining what constitutes a period of national emergency. An emergency includes a health emergency, but the article has made no mention of pharmaceuticals nor has it limited the scope of diseases, which has brought up ambiguity in interpreting the term which leads to the question of which drug can and should be included under the ambit of health emergency.

News at a Glance

The UN and the US withdraw staff from Haiti's capital fearing instability, ever since the assassination of the President Jovenel Moise, Haiti has witnessed increased lawlessness with over 360,000 people who have been internally displaced. The announcement of the resignation of Prime Minister Ariel Henry is expected to further fuel the violence in the State's capital. For more information, see here.

The Philippine President Ferdinand Marcos Jr. rejected the ICC's authority to probe his predecessor's war on drugs campaign which has seen police neutralising over 6200 suspected drug dealers, citing interference of foreign courts dictating investigation into its police force to be unnatural. This position was revealed during a bilateral meet of the Philippine President with Olaf Scholz. For more information, see here.

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There is most definitely a scope for improvements in the existing structure. A simple beginning would be to define the term "essential medication".With this, the ambiguity behind the term and the dispute between the companies and the government would cease. A recommendation for this would be to create a two-tiered system, which would analyse various criteria, like, availability, severity, and the capacity of the patent holder to supply to the market.

Another important change which could benefit the TRIPS agreement would be to consider Compulsory Licensing an obligation and not an option to implement in the domestic legislation. Only 5 countries that have the pharmaceutical capacity to export under compulsory licensing have implemented these in their domestic legislations. India has around 25 Lakh persons suffering from HIV/AIDS, however, only 12% are being treated. The Government of India, which can avail CL for non-commercial purposes, for example, to authorise the production of patented medicines for free or subsidised distribution in government hospitals, has not done so. The interests of the transnational pharmaceutical companies holding the patents seem more important than the public interest.

Compulsory licensing, which will have no impact on public health if the developed countries don't adopt it, a developing nation will only be able to benefit from compulsory licensing only if more developed nations enact compulsory licensing in their legislation.

Toward a Unified Framework: Addressing Copyright Concerns in AI Development and Regulation

- Soumik Ghosh (III B.A.LL.B.)

Copyrights are Intellectual Property rights which exist to safeguard author's original works by giving them exclusive control over these creations. In contemporary times, a question has been raised as to what constitutes "originality" with various countries giving their own interpretations of the same. This question is significant in today's times as originality is not just judged through creativity, the lack of plagiarism or derivation from

News at a Glance

Italy refuses the extradition of Anan Kamal Afif Yaeesh to Israel over fears of him facing acts which violate human rights in Israeli prisons. He was detained in Italy over charges of planning attacks in an unspecified country following which Israel requested for his extradition, along with him there were 2 more accused however they did not appear in court as Israel did not request their extradition. Italian authorities are investigating further pending the results of which he will still be detained. For more information, see here.

A UNIFIL report finds the actions of Israel on 14/10/2023 which led to the death of a reporter contrary to international law. Israeli tanks reportedly opened fire despite silence over the Blue Line injuring over 6 reporters and killing one despite them being clearly identifiable. The Israeli Defence forces in response to the report maintain that it respects the press integrity however it also recognises the dangers of being present in a war zone. For more information. See here.

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existing works but the very source of generation itself. Essentially with the uprising of Artificial Intelligence which is now capable of generating lifelike videos in addition to text based materials on a simple text prompt of the user it now brings into question the facets of originality and copyright assignment into question, especially since the predominant feature of Large Language Models (LLMs) is that they generate outputs based on the training data which is fed into them.

The registration and protection of Copyrights on an international scale is regulated by the Berne convention which affords national protection to original works the moment the said work comes into existence. However this is complicated because of two reasons: the first being that LLMs are trained on existing data which may lead to the possibility of generation of works infringing on the original author's works. An example of this is the recent lawsuit filed by artists claiming that their data art was used without prior permission. This leads to the entire debate of whether works generated by AI should be allowed to be copyrighted in the first place owing to the huge possibility of infringement due to its very nature of deriving on already existing work without the human creative touch or rather just a bland assimilation without a novel step. Secondly, countries have differing stances regarding what data may be used to train the said LLMs and the disclosure of data which is used in training the models essentially developer of AI models under the current paradigm do not need to thus further complicating the issue due to stark regulatory differences across jurisdictions.For instance if a developer builds an AI model based on public data, they're not required to present what data is being used in the US or the majority of countries at this moment except in EU.

EU law currently prohibits the use of copyrighted works in the training of LLMs under the AI act. Under article 60i, the use of copyrighted material is prohibited unless relevant exceptions or limitations apply, additionally this directive lays down additional exceptions for teaching, research etc. Article 60j mandates compliance regardless of jurisdiction and finally article 60k

News at a Glance

The US has passed a bill in the senate forcing TikTok, a popular social media platform to divest its ownership from its parent company ByteDance primarily based in China or to face a ban in the US. This bill's main objective is national security and protecting the interest of the American citizens as cited by US spokespersons. The Chinese government and the parent company have both opposed this with the former saying that this is in violation of the spirit of free competition and the latter citing that it needs the approval of the Chinese government and has at no point in time demonstrated actual security concerns other than speculation. For more information see here and here.

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states disclosure requirements of data used for training. It is to be noted that the AI act implemented by the EU is the first of its kind to address copyright and its application in the use of training data for AI.

U.S. law on the other hand has no such disclosure requirements as of now, but the entire debate of whether copyrighted material can be used in training hinges on the interpretation of the fair use doctrine in the various ongoing lawsuits regarding the use of copyrighted material in training data.

This leads to an interesting overlap amongst the laws of the aforementioned jurisdictions and eventually various others, thus now it begs the question: Is a centralized treaty the need of the hour? As copyright laws are predicated on enforcement especially in the international context. AI is an ever growing franchise with certain AI models like Gemini which are capable of accessing the internet in real time thus monitoring what material is used to generate outputs becomes even more complicated and transboundary issues while collecting training data are bound to arise as even outside of operation in a specific jurisdiction i.e presenting the final product; training data for an AI can originate from any user on the internet. UNESCO has recently passed the landmark treaty on the ethics of AI in light of the rapidly developing forefront of AI technology however this is more of a human rights approach which has been adopted. Given the legal landscape of IP in the international arena a more specific treaty addressing IP issues and centralizing them seems to be a necessity.

Beyond Borders: The Legal Vacuum of Space Patents

- Anuradha Lawankar (II B.A.LL.B.)

Space exploration in recent times has undergone a paradigm shift, evolving into a bustling arena of commercial ventures and technological breakthroughs. As it ventures further into the cosmos, the legal landscape governing these activities has become as complex and expansive as the celestial bodies themselves. Among the myriad challenges faced in this new frontier, intellectual property rights (IPR)

News at a Glance

President Nana Akufo-Addo of Ghana has commented that they will not backslide on their human rights record in light of the passage of the anti lgbtq bill which has been challenged in their Supreme Court, this bill is potentially detrimental to Ghana's economy as its passage could lead to a loss of IMF funding, However the IMF has stated that it cannot weigh the implications of a bill not yet signed into law. For more information see here.

The ICJ will hold hearings on 8th and 9th April respectively to hear Nicaragua's case against against Germany for giving military aid to Israel and defunding the U.N. Palestinian refugee agency (UNRWA). The ICJ was asked to issue emergency measures requiring Berlin to stop military aid to Israel and reverse its decision to stop funding UNRWA. Germanyis accused of violating the 1948 Genocide Convention and the 1949 Geneva Conventions on the laws of war in the occupied Palestinian territories. For more information, read here.

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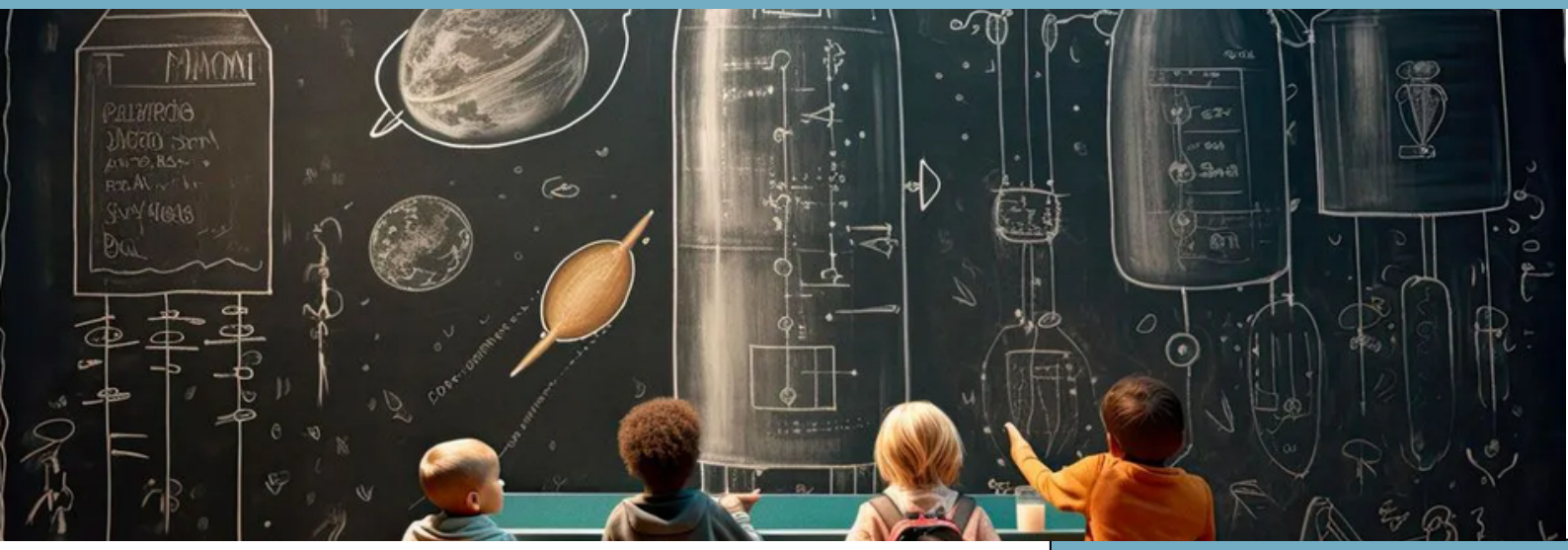

stand out as a pertinent issue.

There are five major international treaties that specifically address the legal framework in space. They are known colloquially as the Outer Space Treaty, the Rescue Agreement, the Liability Convention, the Registration Convention and the Moon Agreement. Outer space exceeds the boundaries and jurisdiction of any country and the Treaty establishes outer space as res communis – a common area that all can explore but none can appropriate. It curtails the use or occupation of any portion of outer space or a celestial body by one nation and prevents them from hampering the free access of other states to the same resource. However, patent laws are generally exclusionary in nature, preventing others from unauthorized use of patented inventions for limited periods of time.

Additionally, establishing infringement is difficult as 'private space companies' can be established in almost any country, coupled with the advancement in technology and domestic capabilities. This gives rise to the problem of "flags of convenience", which creates an additional barrier to the protection of inventions designed for use in outer space. Considering the case for Antarctica. and the high seas on Earth, state assertions of sovereignty may not be valid in outer space.

There are strategies that can be undertaken to solve the present issue. Firstly, focusing on Earth-based infringement, shifting the emphasis of patent protection to activities on our planet where jurisdiction is clearer and enforcement is more feasible. By targeting the space object itself or the method of manufacturing it, companies can better safeguard their intellectual property against infringement regardless of where the object is utilized.

Secondly, utilizing strategic jurisdiction selection, wherein companies seek patent protection in key jurisdictions where significant space activities occur. This includes major space-faring nations like the U.S., China, and Russia, as well as other countries with advanced technological capabilities or favorable regulatory environments. Multinational forms

News at a Glance

The UNICEF warned of a potential catastrophic loss of lives in Sudan as the civil war worsens hunger and called for a massive mobilisation of resources. Sudan's paramilitary Rapid Support Forces (RSF) has been fighting Sudan's army for control of the country in a war that has killed thousands, displaced millions of people inside and outside the country and sparked warnings of famine. For more information, read here.

Finland plans to adopt temporary legislation that will allow its border authorities to block asylum seekers seeking to enter its territory from Russia Finland closed all crossings on its 1,340 km (830 mile) border with Russia late last year amid a growing number of arrivals who lacked valid documents to enter the European Union. Finland had joined the NATO alliance in response to Moscow's invasion of Ukraine last year. For more information, read here.

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of patent protection, such as the European Patent or the Patent Cooperation Treaty, offer streamlined processes for securing protection across multiple regions.

Thirdly, drawing parallels with maritime law, particularly the United Nations Convention on the Law of the Sea, offers insights into potential regulatory frameworks for outer space activities. Leveraging existing agreements and legislation, combined with international cooperation and dedicated organizations, could pave the way for establishing norms and processes for space trademark regulation. To meet this challenge head-on, governments and international organizations must consider innovative approaches to enhance IP protection in outer space.

Fourthly, expanding the role of existing protocols, such as the Madrid Protocol administered by the World Intellectual Property Organization (WIPO). By amending accession processes to include outer space jurisdictions, the Madrid Protocol could provide trademark protection for activities in Earth's orbit, the moon, and even Mars. Such an extension would ensure that member states have the option to accept or reject this expanded protection, thereby fostering international cooperation in space IP regulation.

Lastly, the creation of a new treaty dedicated specifically to trademarks in space presents another viable option. Similar to the IP sections of the International Space Station (ISS) Treaty, this treaty could delineate the scope of trademark protection and establish mechanisms for enforcement, such as judicial or arbitration review panels. Leveraging existing treaties, which already safeguard physical property, would streamline the process, potentially requiring only minor amendments to accommodate trademarks off-world.

Technical and monetary involvement from the private area will become essential in the forthcoming expansion of space activities. For contribution of private sector, various public policy tools can be predicted even though. For emerging successful space business reproductions connecting public/private alliance, Intellectual property protection will play a vital role.

Upcoming Activities

Combating Impunity for International Crimes: The EU's Response to the War in Ukraine and Beyond Conference.

The Centre for European Law of the Université libre de Bruxelles is hosting an academic conference on "Combating Impunity for International Crimes: the EU's Response to the War in Ukraine and Beyond" at the Spaak Room, Institute for European Studies, Université libre de Bruxelles (IEE-ULB) (Av. F.D. Roosevelt 39, 1050 Brussels). Tuesday 19 March, 09.00-17.00 (CET). The conference will be held in english and there is no registration fee. For more information see here.

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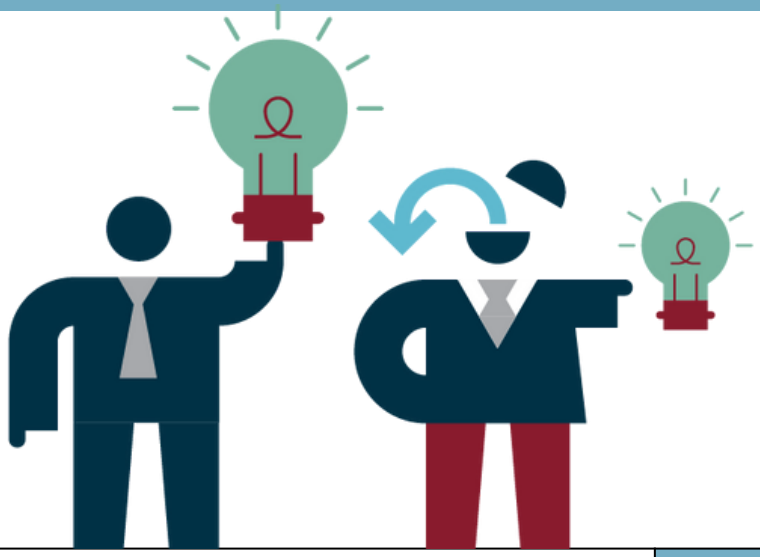

The Secret IP - Protection of Trade Secrets in International Law

- Asmita Ayilavarapu (III B.A.LL.B.)

When thinking of trade secrets, people often think only of the recipes or manufacturing processes, which often overshadow its bigger scope of protecting a wide variety of valuable information. According to WIPO, a trade secret is any confidential business information that provides an enterprise with a competitive edge.

However, a trade secret enjoys no protection if discovered. That is, if the secret is learned legally by the means of "reverse engineering", or independent creation, and enters the public domain, then it ceases to be the exclusive property of the owner and risks losing its commercial value and competitive edge, leaving no legal recourse.

On an international scale, the law that governs Trade Secrets is enshrined in Article 39 of the TRIPS Agreement which acknowledges it as "undisclosed information". That is framed as per Article 10 bis of the Paris Convention ensuring effective protection against unfair competition. As mentioned in the TRIPS Agreement, the requirements are:

- It must be a secret which is not generally known.
- It must have a commercial value.
- There must be reasonable steps taken to protect the information.

The TRIPS agreement requires the WTO members to create domestic laws to protect trade secrets but is silent on the modalities of achieving this. The countries which do not have any codified legislation are compelled to rely upon obligations created by agreements like confidentiality notices and non-disclosure agreements to protect their trade secrets under the undefined scope of the term "reasonable steps".

While this criteria provides for harmonisation of the meaning of Trade Secrets, this has not been reflected in the domestic laws of several countries. The EU adopted Directive (EU) 2016/943 (the 'Trade Secrets Directive') in June 2016 to provide for harmonised 'procedures and remedies intended to protect trade secrets', which has attempted to provide a minimum standard for the

Upcoming Activities

The Hague Initiative for Law and Armed Conflict (HILAC) Lecture Series

The T.M.C. Asser Instituut, in collaboration with the Amsterdam Center for International Law and the Netherlands Red Cross, is hosting a webinar entitled "The Red Sea Crisis: Assessing the International Legal and Maritime Security Implications" on 20 March at 14:30 (CET). **Register here.**

Call for Submissions: Rosalyn Higgins Prize

The Rosalyn Higgins Prize is an annual prize which awards EUR 1.000 of Brill book vouchers and a one-year LPICT subscription to the author of the best article on the law and practice of the International Court of Justice, either focusing solely on the ICJ or with the ICJ as one of the dispute settlement mechanisms under consideration. Deadline: 15 May 2024. More information can be found here.

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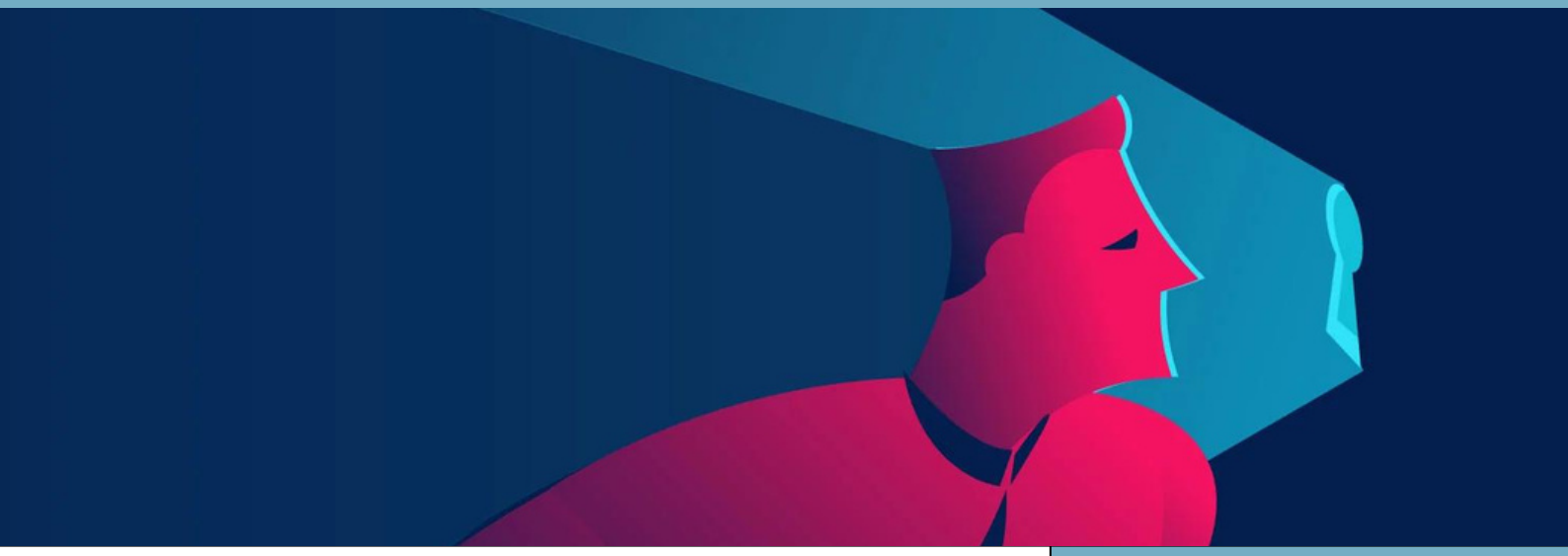

protection of trade secrets. Such harmonisation is said to have benefits such as greater knowledge exchange between businesses and increased incentives to engage in innovation-related activities in the EU, particularly on a cross-border basis.

Japan and the US have variations in their local legislation. For instance, Japan's statutory language in its Unfair Competition Prevention Act (UCPA) slightly diverges from that of the TRIPS Agreement while talking about the "commercial value" of the trade secret. It is defined in terms of usefulness and hence covers a broader scope. USA, on the other hand, in its Uniform Trade Secrets Protection Act (UTSA) mentions "independent economic value", as in the information must derive its value from both being secret and its value to third parties, which is narrower as compared to the TRIPS Agreement. However, both these countries are in consonance when it comes to the requirement of the secret being "not generally known".

Many other parties, like India, do not have any codified legislation yet for the protection of undisclosed information and often rely upon common law. For instance, in India, Section 27 of the Indian Contract Act provides for non-disclosure agreements and is often invoked to protect trade secrets. There are precedents like John Richard Brady & Ors. V. Chemical Process Equipment P. Ltd. & Anr., which was one of the first cases in India that discusses the principles of confidentiality obligations in the absence of a contract.

Editors:
Shreya Patni (V B.A.LL.B.)
Shreya Basu (III B.A.LL.B.)

Upcoming Activities

The Interplay between International Criminal Tribunals and Courts and Domestic Accountability Roundtable

The European Society of International Law's Interest Group on International Criminal Justice is holding an online roundtable discussion on "The Interplay between International Criminal Tribunals and Courts and Domestic Accountability". The roundtable aims to facilitate a comprehensive dialogue on whether states have become more capable or willing to investigate international crimes and the evolving role of international criminal tribunals in supporting and complementing domestic legal processes, reflecting on the developments of the past three decades. Programme and registration link can be found here.