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"COPYRIGHT LICENSING AND COMPETITION: THE INTERFACE BETWEEN COPYRIGHT AND MARKETING COMPETITION"

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ABSTRACT

Intangible properties are considered as valuable properties since they are the creation of skill, labour and human intellect. The inventive thinking led to the creation of inventions which promoted innovations in science and technology. These intangible properties were referred to as intellectual property such as patents, trademarks, copyright, design, trade secret etc.

The existence of Intellectual Property Rights stimulates both investments and development of new ideas, which in turn promotes economic growth which is vital for our society today. By providing a number of protective forms for various industrial property rights the incentive to invest in research and development naturally will increase, as these investments become more secure and the right owner will reap the rewards for his creative effort and innovation. Intellectual property rights, by their very nature, give a monopolistic status to the holder of the right, and so put some short-term restraints on competition in the market. However, in the long run they promote increased competition since a good deal of innovation on the part of competitors is promoted, which will lead to new, competing and substitutable products on the market

On the other hand, competition law takes care of the competition in the market and promotes the competition. Competition law also looks after the monopolistic behaviour of the firms which may result in harm to the consumers. The main objective of Competition Law is to increase efficiency in the market and consumer welfare. Cartelization, mergers, refusal to supply, tying agreements, predatory pricing are few of the abuse behaviours the competition law is concerned with. Presently more than 120 countries including India and China have enacted competition law to regulate the markets.

INTRODUCTION

The Great Indian Copyright Law & Its Copyright Licensing

Indian copyright law is governed by the Copyright Act of 1957, which provides legal protection to creators of original literary, artistic, musical, and dramatic works, as well as cinematograph films and sound recordings. Copyright protection is available for original works that are fixed in a tangible form and exhibit a minimum level of creativity.

A copyright's duration varies with its type. In literary, dramatic, musical, or artistic works, copyright lasts for the author's lifetime plus 60 years while cinematographed films, sound recordings, and photographs have copyright for 60 years.

The copyright owner has the exclusive right to reproduce, publish, communicate to the public, and adapt the work which can be assigned or licensed to others. The assignment involves transferring ownership of the copyright while licensing grants permission to use the work under specified conditions.

So, in simple words copyright licensing is when a copyright owner lets someone use their work, for a fee, without getting in trouble. It provides legal authorization for the licensee to use the work without the risk of infringement claims by the copyright owner. The license can cover work that already exists or future work that hasn't yet been made.

Importance of Copyright Licensing in India

Copyright licensing doesn't mean passing on ownership of the creation; it is just a transfer of interest that the licensee can use to modify the work without the fear of infringement. Thus, it protects the original creation and the creator which makes it important because it fosters creativity, encourages innovation, and promotes the dissemination of knowledge. It is more like a legal way that copyright owners can take to monetize their works while enabling others to legally utilize their copyrighted materials for various purposes.

So, to sum up, copyright licensing is important because:

- It prevents unauthorized copying or infringement by giving copyright owners the exclusive right to control their works' use and distribution.
- It allows copyright owners to earn royalties by licensing their works via a licensing agreement.
- It benefits the licensees, such as individuals, businesses, or organizations to use copyrighted materials while avoiding potential infringement claims and legal disputes and ensuring compliance with copyright laws.
- Facilitates access to a wide range of creative works such as publishing, translation, performance, adaptation, distribution, or display, based on the specific rights granted in the license agreement.
- Fosters collaboration and innovation by allowing creators to share their works with others. Licensees can build upon existing copyrighted materials, create new works, and contribute to the growth of various creative industries.

- It prevents unnecessary disputes from arising as copyright licensing agreements often include provisions for resolving disputes and parties can agree on mechanisms such as arbitration, mediation, or referral to the Copyright Board in case of conflicts arising from the license agreement.

In short, copyright licensing is not just crucial for copyright owners, but also for licensees, and other stakeholders as it helps them all navigate legally and ensure a fair and balanced approach to the use and distribution of creative works.

Competition Law

The word 'competition' means the process of rivalry among firms and circumstances facilitating such rivalry. Competition Law is a tool for promoting social welfare by deterring practices and transactions that tend to increase market power. The purpose of the Competition law is to avert practices having undesirable effect on competition, to promote and sustain competition in the markets, to protect the interests of the consumers and to ensure freedom of trade carried on by other participants in the markets. The objective of Competition law is to ensure that the process of competition does not entail stronger enterprises in bringing the market operations for their own advantage and thereby causing disadvantage to the consumers. The Competition Act, 2002 in India recognizes the importance of IPRs such as patents, copyrights, trademarks, geographical indications, industrial designs and integrated circuit designs. While Section 3 of the Competition Act prohibits anti-competitive agreements, Section 3(5) lays down that this prohibition shall not restrict "the right of any person to restrain any infringement of or to impose reasonable conditions, as may be necessary for protecting any of his rights" enjoyed under the statutes relating to the above-mentioned IPRs. This implies that unreasonable conditions imposed by an IPR holder while licensing his IPR would be prohibited under the Competition Act.

On the other hand, copyright refers to the creator's or author's exclusive and transferable legal right, granted for a certain period of time, to print, publish, perform, record, or film literary, artistic, or musical works. Intellectual property rights (IPRs) are a general word, and copyright is one type of IPR.

A company's or an individual's legally protected intangible assets, such as trademarks, patents, industrial designs, and copyrights, are referred to as intellectual property.[1] The right to reproduce a work is granted by copyright to its original creators as well as to third parties with their consent. Authors do, however, have the only right to use and replicate their works thanks

to copyright laws. So now, lets discuss about the interface between intellectual property rights and competition law.

The Interface Between Intellectual Property Rights and Competition Law

"It is a long standing topic of debate in economic and legal circle: how to marry the innovation bride and the competition groom."

Intellectual property rights and competition regulation are closely related. The former provides exclusive rights within a designated market to produce and sell a product, service or technology that result from some form of intellectual creation qualifying specific requirements. These inventions and creations are protected by patents, copyrights, trademarks, trade secrets, or sui generis forms of protection. Thus, IPRs designate boundaries, within which competitors may exercise their rights.

The standard theory of interface between intellectual property rights and competition law is that: "Both bodies of law share the same basic objective of promoting consumer welfare and an efficient allocation of resources. IPR promotes dynamic competition by encouraging undertakings to invest in developing new or improved products and processes. So does competition by putting pressure on undertakings to innovate. Therefore, both IPR and competition are necessary to promote innovation and ensure competitive exploitation thereof." Intellectual property rights and competition law are two separate legal regimes having distinct objectives and purposes. Intellectual property rights are the exclusive rights conferred upon the creator or the inventor of the property to use and enjoy his creation or invention exclusively. It also affords inventors, and authors in the case of copyright, protection from imitation and gives rights holders substantial discretion over how to use or license their intellectual property. Intellectual property typically is both a key input into and a byproduct of successful innovation, which is a principal factor in fostering a dynamic, growing economy by stimulating competition in new products, new market, and new technologies. Intellectual property, therefore, is a highly valued asset, and it has been granted substantial legal protection by the nations of the world.

Competition law on the other hand preserves competition in the market. Its main purpose is to prevent monopolization of the production process and allowing entry to the competitors in the market. It ushers an environment of free and fair play of market forces. Well designed and effective competition laws promote the creation of an enabling business environment, which

improves static and dynamic efficiencies and leads to efficient resource allocation and in which the abuse of market power is prevented mainly through competition. Although there is a common area where both Intellectual property and competition law intersect with each other, yet their objectives are always conflicting with each other. While Intellectual Property rights confer exclusive or monopoly rights to the innovators and creators. These monopoly rights could lead to substantial market power which may be used to remove competition. The grant of an intellectual property right may shackle competitive market processes. Since both IPRs and competition policy are necessary to promote innovation and ensure a competitive exploitation thereof. Thus, the main function of law is to ensure their coexistence by striking a balance and removing any tension that subsists between Intellectual property rights and competition policy.

Three theoretical bases have been suggested for this reconciliation between IPRs and competition law regimes:

- The view that competition law should only interfere with innovation/IPRs when social welfare is at risk;
- The view that concentration and monopoly markets have the edge over competitive markets in terms of innovation owing to greater capital and resources and
- The view that competition law only concerns itself with consumer welfare when the effects of a proposed action on production and innovation efficiency are neutral or indeterminate.

Intellectual property by virtue of its exclusive characteristics can be treated as an essential facility. The market power available from all intellectual property and the scale and network economies associated with some forms of intellectual property would seem to place it comfortably within the essential facilities.

LITERATURE REVIEW

Various authors/researchers have done their research work in the area of Interface between Intellectual Property Rights and Competition Law. As a result, a lot of literature in this field can be found in books, journal articles, proceedings, thesis and dissertations, reports and magazines.

Kumar Jayant and Abir Roy in their book, "Competition Law in India" examined that Competition law maximizes social welfare by condemning monopolies while intellectual property law does the same by granting temporary monopolies. The qualification attached to

this that the intellectual property law should provide economically meaningful monopolies. Otherwise, competition law which by itself does not condemn the mere possession of monopoly power, but rather certain exercises of or efforts to obtain it, might be allowed to interfere with the monopoly.

Steven D. Anderman in his edited book, "The Interface between Intellectual Property and Competition Law", observed that from the early years of the twentieth century, the conflict between the exercise of IPRs and competition policy tended to be exaggerated by judicial and administrative doctrines initially in the U.S.A and later in the European Union. Intellectual Property Laws generally offer a right of exclusive use and exploitation to provide a reward to the innovator, to provide an incentive to other innovators and to bring into the public domain innovative information that might otherwise remain trade secrets. Competition authorities regulate near monopolies, competition in markets. This regulation occasionally results in limits being placed on the free exercise of the exclusive rights granted by Intellectual Property Laws. Intellectual property rights and competition regulation are closely related. The former provides exclusive rights within a designated market to produce and sell a product, service or technology that result from some form of intellectual creation qualifying specific requirements. These inventions and creations are protected by patents, copyrights, trademarks, trade secrets, or sui generis forms of protection. Thus, IPRs designate boundaries, within which competitors may exercise their rights.

RESEARCH GAP

There is a clear conflict between competition law and intellectual property law. Intellectual Property creates monopolies whereas competition law battles monopolies. In the present research, the researcher will study the conflict between Intellectual Property law and the Competition Law.

RESEARCH OBJECTIVES

The objectives of the research are to:

- Examine the Intellectual Property regimes and Competition Law in the European Union, USA and India
- Examine the convoluted relationship between Intellectual Property law and the Competition law in the major jurisdictions of U.S.A, EU and India.
- Analyze the conflict between Intellectual Property law and the Competition Law.

- Propose the best possible solution to resolve the conflict between Intellectual Property law and the Competition Law and how India as a developing nation can develop its competition law by taking a lesson from the major trading blocks – European Union and United States of America.

RESEARCH METHODOLOGY

The current research involves the following categories of research:

- Doctrinal methodology
- Analytical methodology
- Descriptive methodology
- Historical methodology

ANALYSIS AND DISCUSSION

The interplay between competition and intellectual property law has a vital effect on the market. The two laws operate in totally two directions. Intellectual Property Laws provide negative rights granted to the inventor for his exclusive monopoly rights. The negative right provides a stimulus to the inventor and reward him as an incentive for his creativity. The basic aim of intellectual property rights is to stimulate innovation and produce new products and processes. This Intellectual Property can enhance competition in the market. On the other hand, competition regulates and protects the interests of the inventor and of the technologies as a follow-up action to the invented technology by facilitating through licensing procedures. Competition law maximizes social welfare by condemning monopolies while intellectual property does the same by granting temporary monopolies. The condition is that intellectual property law should provide economically meaningful monopolies. Otherwise, competition law which by itself does not condemn the mere possession of monopoly power, but rather certain exercises of or efforts to obtain it, might be allowed to interfere with the monopoly.

RESEARCH FINDINGS

The competition regulation aims at restricting attempts to extend the exploitation of an intellectual asset beyond the boundaries provided by IPRs. Thus, there is an inherent tension between competition laws and IPRs, particularly if competition laws give emphasis to static market access and IPRs emphasize incentives for dynamic competition. Structured properly,

however, the two regulatory systems complement each other in striking an appropriate balance between needs for innovation, technology transfer, and information dissemination.

CONCLUSION

Competition Law and Intellectual Property Rights are inextricably linked, necessitating a balanced understanding to appreciate the true scope of their complex and multifaceted interactions in modern India's dynamic markets. It cannot be denied that there is some necessary tension and friction in their overlap; where competition law seeks to prevent abuses that may arise as a result of monopolistic power, intellectual property rights seek, in many situations, to grant exactly such monopolistic powers to incentivize innovators to innovate. It is in the best interests of Indian society to have the two regimes operate in such a way that there is widespread competition while also providing enough protection for inventors to recoup their investments in research and development.

These two ends point to a single goal: consumer benefit through the facilitation of a robust environment for innovation. Greater innovation is enabled by organisations competing with one another to produce better and more affordable products and services, whereas IPRs enable greater innovation by providing greater incentives to innovators to benefit from their innovations.

In terms of jurisdiction, India would benefit greatly from greater maturity in the legislative framework governing the extent and scope of the CCI's jurisdiction. Competition law should balance the IPR regime by imposing curbs wherever the exercise of IPRs exceeds "reasonable conditions," as defined in Section 3(5) of the Indian Competition Act, 2002, but such curbs should not go beyond the extent to which the exercise of IPRs causes an appreciable adverse effect on competition.

SCOPE FOR FUTURE RESEARCH

Copyright is a form of intellectual property that covers a wide range of cultural and creative subject matter. The study focuses on copyright-related cases, which may not include important cases on other intellectual property rights (IPRs) that provide precedents for copyright cases. For example, a jurisdiction may develop practice on refusal to license as an abuse of market dominance in patent-related cases. Copyright covers a large variety of cultural and creative subject matter, including literary works, music, films, computer programs, and visual arts.

However, the study does not exclude the gray zones of what can be protected, especially for works of applied arts at the intersection with design law.

Competition law considers specific subject matter of copyright protection as the basis for defining a relevant market. Copyrighted works are intangible goods and enter into many products sold in downstream product markets. The analysis in this report does not solely focus on the licensing markets for copyright-protected subject matter but also includes markets for follow-on products.

Music can be brought to consumers through a variety of products, including DVDs, online downloads, films, broadcasts, and public performances. The analysis will look at a large variety of industries, including film, media, and publishing, with their different market players on different levels of production and distribution. This study does not cover all competition law cases related to sports events, such as broadcasting rights for football matches. While broadcasters may be protected by a copyright-related right, sports events are not protected by copyright. The transmission of sports events may lead to the transmission of copyrighted works, such as music or emblems, which should not be mixed up with the event itself. Many jurisdictions have collected practice on whether licensing of broadcasting rights for league sports matches can be centralized in the hands of national and international sports associations. However, this report does not advocate a comprehensive assessment of this specific case-law on sports rights. Competition law enforcers may find precedents in various fields of competition law application when deciding cases on copyright-related markets.

LIMITATIONS

The conflict between competition policy and the regime of intellectual property rights has been most contentious in the context of patent laws. The methods used to achieve their mutual goals give rise to the interface between competition policy and patent law. On the one hand, competition policy requires that no unreasonable restraints on competition exist; on the other hand, patent laws reward the inventor with a temporary monopoly that protects him from competitive exploitation of his patented article.

IPR protection is a tool for encouraging innovation, which benefits consumers by allowing for the development of new and improved goods and services, as well as promoting economic growth. It grants innovators the right to legitimately bar other parties from commercializing innovative products and processes based on that new knowledge for a limited time. In other words, the law provides innovators or IPR holders with a temporary monopoly to recover costs

incurred during the research and innovation process. As a result, they earn just and reasonable profits, giving them an incentive to innovate.

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