

The Problem of Piracy, Pharmaceutical Sector and Intellectual Property Rights: Pros and Cons

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Introduction

Any rights over creations of the mind or products of the intellect are known as intellectual property rights. For instance, if someone composes a piece of music, then he or she can be thought to have used their intellect and innate talent to create the artwork and hence, they are entitled to have rights over their creation. Similarly, when someone codes an app or software which is similarly a work of their intellect, then the law provides for provisions wherein the individuals who have created the software or the app can have rights over its distribution, licensing, and sale. Of course, to qualify for protection under the existing intellectual property regime, the creator has to conclusively prove that the creation is his or hers and they have not lifted the idea or the process from someone else or have not copied their creation from an existing piece of intellectual property.

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I. INTRODUCTION

The intellectual property rights cover the musical, literary, artistic, inventions and discoveries, and even designs, artworks, phrases, words, and symbols. Indeed, it can be said that IPR (Intellectual Property Rights) encompass any work of the mind and hence, the ambit of the works that are covered is indeed growing by the day considering the fact that the 21st century has witnessed an explosion in the number of products that are creations of the intellect. There are several types of IPR and some of them are trademarks, patents, copyright, trade secrets, and rights over industrial designs. Without elaborating in detail on these types of IPR since this article is intended to be an introductory primer, it needs to be mentioned that with the growing trend of IPR theft and violations wherein the chances of stealing and lifting as well as copying and imitating the works of others has become rampant, an entire industry of lawyers, legal experts, and legal firms are engaged in advising their clients about the nuances of filing for protection under IPR laws and suing imitators and violators as the need arises.

II. LITERATURE REVIEW

A. The Objectives of Intellectual Property Rights

The stated objective of the existing IPR regime is to ensure that the creator is encouraged to produce more and create more by protecting his or her creations from copying and imitation and hence, place him or her in a position wherein they can commercially gain from their creations. The intention is to ensure that the artist, composer, scientist, developer, and engineer as well as anyone who has created a work of the mind is incentivized to profit monetarily from their creations thereby encouraging the progress of society.

B. Criticism of Intellectual Property Rights

In other words, as the creators contribute to society through their creations, the IPR laws ensure that they continue to do since society tends to benefit from such creations. Having said that, it must be noted that there are instances where the IPR laws are criticized by some as being tilted towards the interests of the

developed countries. The best example of this aspect are the patents over pharmaceuticals which under the law prohibit anyone else from producing those drugs thereby giving a virtual monopoly to the Pharma Majors who have patents over them. This usually makes the drug companies price their products in a manner as to shut out the poor in the developing countries since the Pharma companies want to not only recoup their investments made in the R&D (Research and Development) but also want to ensure that they make profits.

C. Problem of Piracy in China and India

Having said that, it must also be noted that in the absence of IPR laws, there would be a free for all wherein everyone copies everyone else leading to a situation where society loses out in the longer term because nobody is incentivized to be creative. For instance, in China and India, the use of pirated software is the norm rather than the exception which makes many soft product companies wary of releasing their products in these countries. Indeed, the problem of piracy has become so rampant in these countries that concerned governments are involving all stakeholders to combat this piracy.

D. The Free Software Movement and Wikipedia

Of course, the parallel emergence of the free software and the Copy Left movement that emphasizes that software has to be free and open source to ensure that it gets better is a trend that has become noticeable in recent years. The proponents of the free software movement claim that ensuring open source software would make more developers contribute to the effort of enhancing such software leading to collaboration instead of completion and actualizing societal gains. Indeed, the astounding success of Wikipedia which is an open source online encyclopedia should convince everyone that despite the need to gain commercially, perhaps the future of the IPR regime would lie in sharing that obviates stealing and collaborating that makes competition redundant. The intention behind this line of thinking is that the 21st century is a pivotal moment in history where humanity can choose to either compete with each other to the point of annihilation or collaborate with each other to the point of transition to a more equal and equitable not to leave out a sharing and caring world.

III. FINDING PRIBLEMS

A. The Problem of Piracy

No discussion on intellectual property rights (IPR) is complete without mentioning the problem of piracy around the world. Piracy is defined as the copying, stealing, reproducing, transmitting, and selling of the intellectual property (IP) of an individual without his or her express consent and written approval as well as without paying that person the royalties due to him or her. Piracy as we know pertains to buying IP products at deeply discounted prices since the product would have been pirated and hence, there are no costs for the pirate except the minimal cost of reproduction. The range of such products can include software, movies, music, books, and even pharmaceuticals and other works of art that would have been produced at great cost by the inventor.

B. Costs of Piracy

It is estimated that the world loses billions of dollars annually due to piracy because as mentioned earlier, all that the pirate has to do is to reproduce the IP products by stripping them of the digital protection that the manufacturers would have put in place. Indeed, the fact that the pirates are devising ingenious methods of stripping the DRM or the Digital Rights Management security layer means that despite advances in technology, the IPR holders are simply unable to combat and contain the menace of piracy.

C. Piracy and its Worldwide Effects

The problem of piracy has become so rampant that even industry leaders such as Microsoft, Apple, Motion Picture Studio Houses of Hollywood, and major publishers are wringing their hands at their inability to prevent piracy. The problem of piracy that was hitherto restricted to the developing world wherein Asian countries were identified as the main culprits has now spread to all corners of the world thanks to the advent of the internet and the relatively anonymous protection that the internet offers to the pirates. What this means is that the problem of piracy is not restricted to the Third World alone and now affects the entire world.

D. Points Raised by Supporters of Piracy

The key point to note about piracy is that its supporters claim that they are merely catering to the demand for inexpensive IP products which are simply priced way too high for the customers and the consumers who cannot afford them. They also point to the fact that in the digital age, the higher priced IP products do not have relevance since the medium is such that it enables sharing the products free and at marginal cost to the producers. Their contention is that the IP holders can price their products at a cost that would enable them to recover their investments and not too high that is driven by greedy profit making. Further, the supporters of free software and free IP products insist that the future of the internet and the digital age lies in free distribution as opposed to predatory pricing.

E. The Industry Response to Piracy

The response of the industry to these points is that they spend a lot of money and invest effort and resources in getting the IP products to the market since they have to take care of costs such as royalties for the creators, marketing expenses, and other expenses that need to be recovered. Moreover, they contend that if the pirates continue their ways, the incentives for the IP creators would diminish as they can neither make money nor invest the time and effort needed to create original works. Above all, the industry contends that piracy is a crime and just as throughout history, the pirates were viewed as buccaneers and exploiters, the modern day equivalents have to be handled similarly.

F. Recent Moves

Indeed, this has already happened in the recent years first by the United States Supreme Court shutting down the popular file sharing site, Napster, and then very recently, the US FBI (Federal Bureau of Investigation) teaming up with the other law enforcement agencies to arrest the owners of the file sharing sites such as Mega upload, Kim Dotcom, and then shutting these sites down. Moreover, there have been concerted moves by the governments of various countries to crack down hard on pirates and those peddling illegal software, music, books, and other IP products across the world. Though these moves have resulted in some success in containing piracy, unless there is a change in mindset and a consensus between the industry and the governments on one hand and the free IP movement adherents on the other, the problem of piracy would remain with us.

IV. PROS AND CONS

A. The Case for Patents

The Pharma sector is often caught in the fight over whether the enforcement of IPR or Intellectual Property Rights should be followed or whether the sector exists for alleviating the health concerns of the poor and the needy thereby ensuring affordable drugs to the masses. Before we launch into the discussion of the pros and cons of this debate, we must first examine the issues at hand. It is indeed the case that the Pharma sector

spends huge amounts of money in research and development of new drugs which are then priced at rates that let them recoup the investment as well as make profits. Further, the current sociopolitical and legal thinking in the United States and the West is that since the Pharma sector spends a lot on R&D, they must be allowed to patent the drugs that they develop and ensure that competitors cannot copy or produce the same drugs. This is the basic legal position in most parts of the world where the idea is to incentivize and encourage the Pharma companies to come out with better drugs by patenting those inventions and pricing them accordingly.

B. The Case against Patents

However, this line of thinking has not been followed in the Third World where the governments insist that the Pharma companies can only patent the processes by which they manufacture the drugs and not the underlying product. This means that any competitor can make the same formulaic drugs using a different process thereby ensuring price fairness due to market competition. The rationale for this thinking is that most of the Third World steeped in poverty cannot afford the high prices for drugs especially when the majority of their citizens who are often poor and needy are in desperate need of lifesaving drugs at affordable prices. This is the other side of the issue which the Western Pharma majors have objected to since they lose the monopoly over their drugs that are patented and in whom they have invested substantial amounts of money. Indeed, with globalization and the opening up of many developing countries to Western companies in the 1990s, the various agreements under the WTO (World Trade Organization) such as GATT (General Agreement on Tariffs and Trade) required the signatory countries to dismantle protectionist regimes as well as to let the drugs be patented not only for the processes but also the products.

C. Debating the Issue

If we examine these two sides of the debate, it is indeed clear that both positions are strong and have valid points. For instance, the case for patents and their protection is strong since the Pharma majors invest in R&D and drug trials and the time to market is indeed long. However, on the other hand, the developing world also needs their concerns to be taken care of since they have not reached a stage where their people can afford medication that is prohibitively expensive. Indeed, the fact that the rampant spread of HIV (Human Immune Virus) among the Third World countries is the strongest argument for leaving out the drugs to treat them from patenting and thereby ensuring cheaper access to the people for such drugs. Therefore, what we have is that a situation has been created wherein there is a heated debate between the proponents of patents and its opponents with neither side willing to back down from their positions. This calls for some serious dialogue between them as well as for the governments of the world to come out with steps wherein both the Pharma companies and their citizens win in the bargain.

D. Some Possible Solutions

For this to happen, both parties must be willing to concede ground and back down from brinkmanship. This can take the form of the Pharma companies cross subsidizing the expensive drugs especially those that treat life threatening conditions. Further, they can also agree to a patent protection regime of five or ten years instead of the sometimes lifetime and sometimes decade's long protection which they have at the moment. Apart from this, there can be better cooperation between the various Pharma companies so that they undertake Pro Bono selling by differential pricing in their home countries and in the Third World. The latter in turn can encourage their domestic companies to invest more in R&D and not just copy the drugs made in the West which is the case in many of the Third World countries. Moreover, they can offset some of the losses of the Western Pharma majors by absorbing some of the costs and letting the poor and the needy benefit in the process. Both these strategies are currently being followed in India where the government subsidizes the HIV drugs in addition to many drugs that cater to life threatening conditions.

V. CONCLUSION

No matter which side of the debate one is on, the fact remains that IPR is an accepted norm for all creators and hence, all stakeholders have a duty to abide by it and ensure compliance. Even if someone disagrees with the existing IPR regime, then there ought to be a reasoned debate instead of shouting matches that produce more noise than ideas thereby detracting from the purpose of engaging in conversation to add value to the IPR regime.

Therefore, what this article suggests is that all the stakeholders ought to come together under the auspices of a global multilateral organization such as the United Nations and then, debate the various points that are contentious and try and arrive at some meaningful solution. In this context, it also needs to be mentioned that piracy thrives on the very human desire to get something for free and hence, unless this aspect is taken into account, industry as well as the consumers would continue to be at loggerheads. Having said that, it must also be noted that both sides must work together instead of at cross purposes as ultimately, both sides lose in the process with the industry losing revenue thereby killing innovation and creativity which affects the consumers in the end. In conclusion, it is time for the world to evolve rules that would guide the future of the digital age and not adopt an Ostrich like attitude wherein the future would catch everyone unawares.

Perhaps the most optimal solution would be from the Pharma sector itself which again using the example of India wherein many Indian Pharma majors often price their drugs in such a manner as to benefit the poor. Of course, the flipside is that unless the governments of the Third World countries make healthcare a right and ensure that their commitment is not only in speeches and instead, they walk the talk by improving the conditions in the hospitals and making generics as well as patented drugs affordable, the fight between the stakeholders would not be resolved. In conclusion, the Pharma sector is too critical to be left alone to the whims of the market and therefore, there is an urgent need for all stakeholders to actualize strategies that would benefit the poor and the needy.

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