

Conflict of International IPR Treaties: Legal Mechanisms For Reconciling Obligations Under Trips, Berne Convention, And Regional Ftas

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ABSTRACT

International intellectual property treaties are essential frameworks for multinational rights protection, which promotes inventiveness and originality. By protecting intellectual property, these agreements not only harmonize legal norms but also promote global trade. For these purposes, treaties like Berne Convention, Paris Agreement, TRIPS-WTO were signed in by many countries. However, conflicts among these IPR regimes occurs in different situations wherein WTO-TRIPS obligation, Berne Convention Copyright Standards are directly in conflict with the provisions given in the framework of TRIPS-plus as they overlap in the area of regional FTAs (Free Trade Agreements). The hierarchy and methods for reconciliation found in the public international law and specialized IPR regime are mapped out in the present research paper. The paper explains how

KEYWORDS : Intellectual Property Rights, Berne Convention, TRIPS, FTAs, Copyright, International Treaties.

I. INTRODUCTION

The legal framework around intellectual property rights (IPRs) has been profoundly altered by the globalisation of trade and innovation, leading to a complex network of international treaties and trade agreements. The Berne Convention for the Protection of Literary and Artistic Works (1886), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994), and an expanding number of bilateral and regional free trade agreements (FTAs) with "TRIPS-plus" clauses are the three main tools at the core of this framework. Although the goals of each treaty are to safeguard intellectual property rights and promote global collaboration, member governments face substantial legal difficulties due to their overlapping and often contradictory duties.

A fundamental framework for copyright protection based on national treatment, automatic protection, and minimum requirements is provided by the Berne Convention, which is overseen by the World Intellectual Property Organisation (WIPO) (WIPO, 1979). By adding enforceable duties on a broader variety of IP categories, such as patents, trademarks, and enforcement mechanisms, TRIPS, which is integrated into the World Trade Organization's (WTO) legal system, takes one step further (WTO, 1994). Notably, TRIPS includes important elements of the Berne Convention but leaves out others, such moral rights, which results in inherent contradictions.

A new level of complexity has been brought about by the recent spike in FTAs and RTAs. A large number of these agreements, especially those involving developed economies, enforce IP norms that go beyond

what is required by TRIPS, frequently limiting TRIPS-permitted flexibilities like mandatory licensing or public health exceptions (Correa, 2007). Legal conflicts about the hierarchy of obligations, treaty interpretation, and conflict settlement emerge when states sign several overlapping treaties. These disputes are particularly urgent for emerging nations, which frequently have to balance maintaining domestic policy space with adhering to stricter FTA requirements and TRIPS.

With an emphasis on international legal concepts like *lex posterior*, *lex specialis*, and interpretive guidance under the Vienna Convention on the Law of Treaties (VCLT), this article investigates the doctrinal and legal procedures for resolving disputes between these overlapping intellectual property treaties. In addition, it examines WTO dispute settlement cases and how these conflicts affect national legal systems, especially in relation to sovereignty, legal fragmentation, and the coherence of international policy.

II. TREATY FOUNDATIONS AND OVERLAPS

THE BERNE CONVENTION

It was adopted in the year 1886, the Berne Convention states the rights of writers and further states regarding the preservation of their works. It protects poets, composers, painters, authors and other artists the power to decide a) who can utilize their creations and b) under what situations c) when it can be utilized.. It is based on three primary ideas that specifies the provision of minimum safeguards required, along with some other provisions that are accessible to developing nations who wish to utilize them.

Certain restrictions and exceptions to economic rights are permitted by the Berne Convention;

- Copyrighted material can be used w/o author's consent or paying any compensation. Articles 9(2) (reproduction in some extraordinary case),
- 10 (quotations and use of works by way of illustration for teaching purposes),
- 10bis (reproduction of newspapers or identical articles and utility of materials for reporting latest events),
- and 11bis(3) (short recordings for broadcasting objectives) all blueprint the prohibitions that are generally called as "free uses" of copyrighted materials.

The signing of several bilateral treaties between countries was largely responsible for this convergence, which began in the middle of the nineteenth century. Although mutual recognition of rights was a feature of many of these accords, they were typically neither comprehensive nor consistent. The Berne Convention for the Protection of Literary and Artistic Works, the first copyright protection treaty, was created and adopted on September 9, 1886, in response to the need for a standardised system. The goal of the Berne Convention is "to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works," according to the preamble.

Three guiding concepts form the foundation of the convention. It also includes a number of clauses that establish the minimal levels of protection, along with additional clauses that developing nations may choose to use.

1. **National Treatment** - Prior to the Berne Convention, numerous bilateral agreements offered reciprocal protection for the works of signatory countries' nationals within their respective borders. The reciprocity principle was the name given to this idea. This idea was accepted on a broader scale, or in a multinational context, by the Berne Convention. According to this principle, member states have a duty to respect foreign artists' creations on an equal footing with those of their own inhabitants. This was a major factor in eliminating the prejudice against foreign nationals' labour.
2. **Automatic and Independent Protection** –

Work protection is not contingent on completing any required registration or compliance requirements. Member nations are therefore unable to impose any administrative requirements for copyright enforcement or continuance. Even if there is no such protection in the nation where the work was created, foreign nationals' works are protected in member states.

3. **Minimum-Standards-of-Protection (MSP)**

The minimum protection stipulated in the treaty must be offered for a minimum amount of time. As a result, a consistent ideal for the protection standard is established. Additionally, it grants the member nations the authority to extend the protection's length and scope beyond the previously established guidelines. These rights include the ability to translate, adapt and organise, perform, recite, or speak in public, broadcast, reproduce, including derivative works from the original work, and have moral rights, among other rights. Subject to a few of exceptions, the minimum period of such protection often lasts for 50 years following the author's passing.

The absence of an enforcement mechanism to adequately execute the multinational treaty's legally enforceable requirements was one of the Berne Convention's major drawbacks. The treaty had no teeth since it lacked any mechanism.

Additionally, the treaty has a number of contentious limitations and exclusions:

- The three-step rule," which refers to the unrestricted use of protected works under extraordinary circumstances.
- Unauthorized usage for educational or illustrative reasons, for newspaper reprint, for covering current affairs, or for creating transient recording.
- After a certain amount of time, the right to transmit and record musical works must be subject to compulsory licensing.

The 20th century saw the rapid development of new technologies, which led to a sharp rise in the share of intellectual property in goods and services traded internationally. Despite the existence of numerous systems for intellectual property protection, many nations had standards of protection that were insufficient or unsuitable. There are differences in protection requirements among industrialized nations as a result of some of them offering excessively generous protection. Additionally, it was believed that earlier international accords lacked sufficient trade-specificity. The international community quickly realized that the international trade order may be distorted in the absence of adequate and consistent intellectual property protection. The TRIPS Agreement went into enacted on January 1, 1995, as a result of these factors.

Although TRIPS is a complex pact that addresses many forms of intellectual property, we are primarily focusing on copyright for the key objectives of this article. With the exception of Article 6bis, this agreement clearly specifies that WTO member nations must abide by the important articles of the Berne Convention, which span from Article 1 to Article 21. Even if they are not parties to the Berne Convention, member states must abide by its entirety, according to Article 9(1) of the convention.

The Berne Convention and TRIPS share many of the same principles, including as mandatory coverage, duration of safeguarding, autonomous and automated protection, minimum standards of protection, and national treatment.

In addition to consolidating the previous treaties, the TRIPS Agreement added new duties in areas that were either not covered by earlier conventions or were deemed to be insufficiently covered by them. Thus, it is also at times referred to as a "Berne and Paris-plus" Agreement.

The treaty's twin compliance arrangement, which is outlined in the General Agreement on Trade and Tariffs (GATT) and Articles 41 to 49, is its most desired accomplishment. In addition to the TRIPS Agreement's dispute resolution procedures, a member state that feels wronged may use the WTO's dispute resolution procedures outlined in the GATT. By submitting violations of the Paris and Berne Conventions to the WTO's dispute settlement process, it also provides the required effectiveness and teeth that these accords lack.

The Berne Convention itself lacks robust enforcement measures, in contrast to many other international agreements. Its inclusion in the Agreement on Trade-Related-Aspects of Intellectual-Property-Rights (TRIPS) of the WTO, however, has greatly improved enforcement.

WTO Dispute Settlement

Member nations can now use the WTO's dispute resolution procedures to address violations of the Berne Convention's principles since the TRIPS Agreement contains the substantive provisions of the convention (apart from moral rights). With possible trade penalties for non-compliance, this establishes a stronger enforcement mechanism.

For instance, a WTO member nation may be subject to trade-related repercussions through the WTO dispute settlement procedure if it does not offer the minimal protection levels mandated by the Berne Convention.

Domestic Implementation

The provisions of the Berne Convention must be applied by each member nation using its own copyright laws. These ideas are incorporated into India's Copyright Act of 1957 (as amended), which offers protection that meets or above the requirements of the Berne Convention.

The Berne Convention's Significance for India

- “The Berne Convention is especially important to India, a growing country with a rich cultural heritage and a rising force in the global creative industries.”¹
- Preserving India's cultural legacy - The tenets of the Berne Convention provide worldwide protection for India's rich literary, artistic, and cultural legacy. Music, literature in different languages, traditional art forms, and other creative expressions are automatically protected among member nations, assisting in the global preservation and promotion of India's cultural identity
- Assisting the creative economy of India - The worldwide protection provided by the Berne Convention benefits India's music industry, publishing industry, film industry (both Bollywood and regional), and expanding software and digital content creation sectors.

CONTEMPORARY CHALLENGES AND THE BERNE CONVENTION

- The Berne Convention nevertheless faces new difficulties in the digital age, despite its enduring impact. The way that creative works are produced, shared, and enjoyed has changed due to the internet, which has led to concerns about how traditional copyright laws should be applied. Management of digital rights Although the Berne Convention existed before digital technologies, other accords such as the WIPO Copyright Treaty have expanded its ideas to digital situations. The conventional

¹ The Law Institute, “Key Aspects of the Berne Convention: Shaping Global Copyright Laws” 30 December, 2023, Available at: <https://thelaw.institute/>

copyright structure is still being challenged by problems like user-generated material, internet piracy, and digital rights management.

- Access and protection must be balanced - It is still difficult for developing nations like India to strike a balance between preserving the rights of artists and ensuring access to educational and cultural resources. There are still conflicts between safeguarding creators and guaranteeing widespread access to knowledge and culture, despite the Berne Convention's minimum requirements approach permitting considerable implementation flexibility.

“A more unified worldwide copyright system has resulted from Indian courts' growing recognition and use of Berne Convention principles in copyright disputes.”²

III. OVERVIEW OF FTAs AND THEIR IMPACT ON IPR

India's intellectual property (IP) laws are essential for promoting innovation, defending the rights of artists, and propelling economic expansion. Free Trade Agreements (FTAs), which demand conformity to international standards, have had a major impact on the nation's intellectual property regime. Countries negotiate free trade agreements (FTAs) to lower trade barriers and advance economic cooperation. FTAs frequently contain clauses that require nations to align their intellectual property systems with international norms, which has a direct effect on IP law. The development of India's intellectual property laws has been greatly impacted by its involvement in numerous free trade agreements.

Switzerland signed the "Trade and Economic Partnership Agreement" (also known as the "FTA") with India on March 10, 2024, together with Liechtenstein, Norway, and Iceland, other members of the European Free Trade Association. It took sixteen years to negotiate this outcome. The FTA includes several clauses on the protection of intellectual property rights that would impact trade between Swiss and Indian businesses, in addition to its main provisions on custom duties and potential for investment. The FTA, which has been in the works for 16 years, has a wide range of uses. It contains regulations governing market access for services as well as industrial and agricultural products. It lays out guidelines for promoting investment and collaboration, removing technical trade barriers, resolving disputes, facilitating commerce, sustainable development, and government procurement.

FTAs usually cover important IP topics, such as:

Patent Protection: Free trade agreements (FTAs) frequently mandate that signatory nations give improved protection for certain goods, including pharmaceuticals, and extend patent protection for a longer duration (usually 20 years). **Copyright Enforcement:** To combat problems like piracy and counterfeiting, several free trade agreements (FTAs) include more robust copyright enforcement procedures. **Trademarks and Geographical Indications:** Free trade agreements (FTAs) have the ability to include clauses that strengthen trademark registration and protection as well as safeguard geographical indications (GIs) such as Kanchipuram Silk and Darjeeling Tea. Many of these rules are based on the World Trade Organization's (WTO) Trade-Related Aspects of Intellectual Property Rights (TRIPS) accord. India's IP laws have undergone substantial revisions as a result of its commitments under many free trade agreements including the TRIPS Agreement, guaranteeing that they now adhere to international norms.

FTAS' EFFECT ON INDIAN IP LAW

The following significant developments demonstrate how FTAs have impacted Indian IP law:.

² The Law Institute, “Key Aspects of the Berne Convention: Shaping Global Copyright Laws” 30 December, 2023, Available at: <https://thelaw.institute/>

- More robust IP safeguards

India has strengthened its intellectual property rules as a result of free trade agreements, particularly in areas like patent enforcement and protection. For instance, India committed to enhancing patent and copyright protection via the India-United States Trade Policy Forum (TPF). In a similar vein, “clauses to increase the duration of patent protection and implement stronger enforcement mechanisms have been added in the India-EU free trade agreements.”³

- **Dealing with Patent Concerns in the Pharmaceutical Industry**

FTAs have put India under a lot of strain, particularly with regard to pharmaceutical patent protection. India has long been a significant provider of generic medications, and its patent regulations have made it possible to produce reasonably priced generics. However, FTAs frequently impose more stringent patent protection requirements on India, which may occasionally restrict the development of generics, especially in the pharmaceutical industry. Discussions over how to strike a balance between international IP duties and public health concerns have been triggered by these changes.

Concerns regarding the price of necessary medications in India and other developing nations have been raised by the India-US Trade Agreement, which has been especially focused on enhancing pharmaceutical patent protection.

- **A rise in technology transfer and foreign investment**

India may be able to draw in international investment with stronger intellectual property regulations brought about by free trade agreements, especially in fields like technology, biotechnology, and entertainment. FTAs guarantee international investors that their inventions and trademarks will be safeguarded in India's expanding market by offering intellectual property protection. Foreign direct investment (FDI) in IP-intensive sectors including manufacturing, IT, and pharmaceuticals has surged as a result.

Additionally, free trade agreements (FTAs) frequently promote knowledge transfer between nations, giving Indian companies access to cutting-edge discoveries and technologies that can support regional sectors and spur economic expansion.

Advantages of Matching International Standards with IP Law

Using FTAs to bring Indian IP legislation into compliance with global norms has the following benefits:
Improved International Trade: India's products and services can compete more successfully in foreign markets with greater intellectual property protection, which will boost exports and strengthen the nation's standing in the global economy.

Protection of Local Innovations: When Indian companies and artists want to grow globally, they have more robust protections that guarantee their intellectual property is protected everywhere. Enhancement of R&D (Research and Development): Indian businesses are more inclined to invest in R&D, which promotes innovation and technical improvement, when patents and innovations are properly protected.

FTAs such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) add another level of complexity to the Asia-Pacific area. Member states are still required to establish strong IPR enforcement and data protection regimes even though the CPTPP suspended some of the most contentious TRIPS-plus IP provisions that were initially part of the Trans-Pacific Partnership (TPP) (New Zealand Ministry of Foreign Affairs and Trade [MFAT], 2021). These measures may need substantial

³ Soni's Vision, “IP Law in India and the Impact of Free Trade Agreements”, 25 January, 2025, Available at: <https://www.sonisvision.in/blogs/ip-law-in-india-and-the-impact-of-free-trade-agreements>

institutional and legislative adjustments for developing nations in the bloc, including Vietnam and Malaysia, and may conflict with their current TRIPS-based flexibilities. As a result, whereas regional integration can increase commerce, it can also put pressure on nations to embrace intellectual property norms that are difficult to balance with domestic priorities and go beyond international minimums.

CONCLUSION

It's difficult to navigate the complex web of international intellectual property (IP) requirements. Standards, enforcement mechanisms, and underlying ideologies are presented differently by the TRIPS Agreement, the Berne Convention, and an increasing number of regional free trade agreements. Although the goal of TRIPS and Berne was to create a uniform standard for IP protection worldwide, the growth of regional free trade agreements, particularly those with TRIPS-plus clauses, has added more levels of complexity. Countries, especially those in the Global South, are frequently placed in a challenging situation as a result of these overlapping responsibilities: how to perform all of their international obligations while maintaining policy space for development, education, and public health?

International law offers a toolkit for reconciliation in spite of these conflicts. States can resolve conflicts between provisions with legal coherence by using tools like the WTO's Dispute Settlement Body, the Vienna Convention on the Law of Treaties' interpretive guidelines, and principles like *lex specialis*. Additionally, regional IP cooperation and domestic implementation strategies show that harmonisation need not always equate to consistency, particularly in situations such as the EU or Africa. It is feasible to create legal frameworks that uphold international agreements while customising safeguards to meet regional need.

In the end, international IP law should aim to foster innovation, creativity, and fair access to information and technology rather than just upholding rights. The international community must place a high priority on communication, adaptability, and equity as treaty responsibilities continue to change. This will guarantee that the IP legal system benefits everyone, not just those with the most bargaining leverage. Treaty disputes can thus be turned into chances for more responsive and inclusive global government. Not every regional free trade agreement must follow the TRIPS-plus paradigm. Transnational IP frameworks should prioritise capacity-building, transfer of technologies, as well as accessibility to public goods, especially in Africa, Asia, and Latin America. Developing countries can negotiate intellectual property laws that serve their development goals while complying with by TRIPS and Berne by using frameworks like ASsEAN (Asia) or ARIPO (Africa).