Balancing Competing of Interest Regarding Patents and Copyrights in Sri Lanka; a Look at the Intellectual Property Act No 36 of 2003

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Abstract:- **Considering the special nature of intellectual property as an intangible product of human intellect, Intellectual Property Act No 36 of 2003 has been imposed to handle the intellectual property rights in Sri Lanka Concurrent demands for protecting the rights of the inventors, while restricting them form keeping undue monopolies give rise to conflicting interests in the field. In achieving a balance between these two competing interests, the Act attempts to incorporate certain guidelines based on the standards set out by the World Trade Organization (WTO) in TRIPS (Agreement on Trade Related Aspects of Intellectual Property). However, hardly any systematic analysis has been done to examine how these guidelines make the balance between competing interests in Sri Lankan context and thus the present paper aims to evaluate whether the measures taken under the Act are sufficient to achieve this desired balance relating to patents and copyrights. The article is written using a qualitative method by using the relevant sections of the Act which are evaluated through scholarly writings and decided case law. It can be seen that while at times the Act has complied with the minimum standards set out under the TRIPS regime and sometimes even going beyond the parameters and giving TRIP S*plus* protection, there are some areas such as Traditional Knowledge (TK) where the Act has been unable to provide a suitable amount of protection under patents or copyrights. The article therefore concludes on these shortcomings and suggest possible changes that could be implemented to overcome with these lacunas.**

Key Words: **Intellectual Property, Patents, Copyrights, IP Act No 36 2003**

I. INTRODUCTION

We must stop thinking of intellectual property as an absolute and start thinking of it as a function – as a process, which, if it is to be successful, must meet diverse aims: the assurance of a fair reward to creators and inventors and the encouragement of research and creativity, on the one hand: and on the other hand, the widest possible dissemination of the ideas and products of which the world, and all the individuals in it, have such great need (Henderson, 1993). Intellectual property (Traditionally IP is divided into Industrial property and Copyrights) is thus defined as the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields (*Background reading materials on intellectual material on intellectual property*, 1988). In the late 18th and the early 19th century there was a great debate whether to have an IP regime or not but with the beginning of 20th century the argument has shipped to demarking its boundaries. There are two main reasons for granting IP rights, one is to give statutory expression to the moral and economic rights in creators in their creations and such rights of the public in access to those creations and the other is to promote, as a deliberate act of government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

The above justification may be said to be a general assessment and there are three main justifications given for granting IP rights(There are many more theories justifying the granting of IP, such as the personhood theory, social benefit theory and the more recent tendency of Human rights) First is the Labor theory advanced by Locke the second is the Utilitarian Theory which derived from Bentham and the third is the Law and Economic Argument which is advocated in recent times by Landes and Posner (Landes & Posner, 2003). The Lockean theory advocates that, the labor of his body and the work of his hands, we may say are properly his (Quabeck, 1980). Though Locke never intended to justify intellectual property by using his Natural Rights thesis the modern scholars have used the Lockean justification of Real property to justify Intellectual property.

According to this thesis what a man produces with using his labor must be for him to enjoy. when an inventor uses his labor in inventing a new product he should be given the right to use it for his well being. This is done by giving him exclusive rights to do or not to do particular things with the invention to the exclusion of the others. The Utilitarian theory brings a some what different justification regarding Intellectual property. It argues that without the copyright, patent, and trade secret property protections, adequate incentives for the creation of a socially optimal output of intellectual products would not exist (Harrison, 1992). But one must remember from the outset that this theory is concerned more with the consumer than with the producer. The [United States] constitutional justification (Art. 1, s.8. The congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries) for patents and copyrights to promote the progress of science and the useful arts is itself utilitarian. The

gist of this theory is that by granting IP rights there will be an optimization of the IP products which will readily available for the consumption for the consumers.

The Law and Economics theory justifies the granting of IP by stating that if intellectual property were not protected then the needs of the market would not be met. For many adherents of law and economics theory, a natural corollary is that intellectual property should have strong protection since the ability to free-ride on another's intellectual property would undermine allocative efficiency (Aplin & Davis, 2013). Since IP rights grant owner's exclusive rights to do certain acts and prohibit others from doing the same act. When the government grants IP rights, it has a very difficult task of balancing the interest of the all the stakeholders who are going to be affected by it. When we speak of stakeholders we speak broadly of all of them who have an interest in the society with regards to the granting of IP rights. But for the convenience of this study we are considering more generally about the producers and the consumers of IP products. In achieving a fair balance, the government has to take into consideration all the economic, cultural and social values that inhibits the society and this is by no any means an easy task.

II. DISCUSSION

The contrasting factor with regards to IP from real property is that it is conceptually independent from the material form embedding the intangible property. So once the physical object that embodies the Intellect ideas parts from the creator he has no means of monitoring it since the physical object belongs to the buyer but the intellect idea that embodies it does not belong to him. With this peculiar situation, the IP rights intervenes and protects the intellect ideas of the creator that is embedded in the physical object for a limited period of time in order to protect the interest of the creator. When law does do this, it has to always keep in mind the limit which needs to be adhered. The scope of protection is thus made as broad as needed to create incentives to production, but not so broad as to hinder access and competition any more than is necessary to achieve the incentive goal (Dreyfuss, 2004). With all of this in mind now we focus our attention on two particular kinds of IP rights, namely patents and copyrights in assessing how each of these rights have manage or tried to strike the balance between the competing of interests with regards to the stakeholders. Here our focus will be on the theoretical underpinnings justifying these rights and how through a process of compromise it has tried or managed to achieve this. We would first of all focus on the granting of patent rights.

III. PATENTS

The patent system changed this; secured to the inventor, for a limited time, the exclusive use of his invention; and thereby added the fuel of interest to the fire of genius, in the discovery and production of new and useful things (Lincoln & Howell, 1915) A patent is a limited monopoly that is granted in return for the disclosure of technical Information (Bently, Sherman, Gangjee & Johnson, 2018). There is a trade-off in granting patents that is the protection given for an inventor by the government for the disclosure of his invention to the public. Normally patent rights extend for a period of 15-20 years from the date of filling. Sri Lankan Intellectual Property Act No 36 of 2003 under section 83(1) gives 20 years of protection. The effects of the grant of a patent are that the patented invention may not be exploited in the country by persons other than the owner of the patent unless the owner agrees to such exploitation. To this extent a patent is a true monopoly in every sense because it allows the inventor a greater deal of exclusivity to exclude others for a period of 20 years. There are four main justifications advanced by those who find it necessary to have a patent system. They can be thus summarized as follows (Machlup & Penrose, 1950).

1. A man has a natural property right in his own ideas. Their appropriation by others must be condemned as stealing. Society is morally obligated to recognize and protect this property right. Property is in essence exclusive. Hence enforcement of exclusivity in the use of a patented invention is the only appropriate way for society to recognize this right. (This argument closely resembles the lockean argument.)
2. Justice requires that a man receive, and therefore that society secure to him, reward for his services in proportion as these services are useful to society. Inventors render useful services. The most appropriate way to secure to inventor's rewards commensurate with their services is by means of exclusive patent rights in their inventions.
3. Industrial progress is desirable to society. Inventions and their exploitation are necessary to secure industrial progress. Neither invention nor exploitation of invention will be obtained to any adequate extent unless inventors and capitalists have hopes that successful ventures will yield profits which make it worth their while to make their efforts and risk their money. The most effective and cheapest way to achieve this is the grant of patents. (Arguments 2 and 3 resembles a utilitarian justification)
4. To secure it at a sustained rate it is necessary that new inventions become generally known as part of the technology of society. In the absence of protection against immediate imitation of novel technological ideas, an inventor will keep his invention secret. The secret will die with him, and society will thereby lose the new art. Hence it is in the interest of society to induce the inventor to disclose his secret for the use of future generations. This can best be done by granting exclusive patent rights to the inventor in return for public disclosure of his invention. (This resembles the law and economics justification for granting IPR)

As mentioned above these justifications have been more favored towards the protecting the interest of the creator and it

can be said to be inventor-centric. But as a government it has to balance the conflicting interests of all the stakeholders and now we turn our focus on how this has been achieved or tried to be achieved in the field of patent law.

The Balancing Act

The patent holder would have an almost absolute right. In some countries like the USA even if a person out of curiosity makes an invention for his personal use which is already patented he will infringe the rights of a patent holder, but this is not the case in UK where it is allowed. If the law does not allow any limitations and exceptions and the key instruments for fine tuning property rights and balancing interest are the statutory exceptions and limitations. While limitations totally take away the rights granted under IP to the creator the exceptions only allow a defense to the alleged infringer to avail him from his liabilities. Even the theories that were advocated for the justification of intellectual property rights do recognize the boundaries of IP rights. The lockean theory advocates a sufficiency provision which states ―for he that leaves as much as another can make use of does as good as take nothing at all. But this may not go well with patents as patentee excludes all the others from making such an invention for a period of 15-20 years.

But a more profound argument is made by those who adheres to a utilitarian approach in stating that if the goal of private intellectual property institutions is to maximize the dissemination and use of information, to the extent that they do not achieve this result, these institutions should be modified. Finally, the law and economics theory advocates that they would expect IPRs to be granted only to the extent that they *do* provide incentives. To grant more extensive protection than is needed would result in the social costs exceeding any dynamic benefit (Aplin & Davis, 2013). The Berne convention though mainly concerned with the law relating to copyrights it gives a guideline for the implementation of exceptions and limitations by stating that it shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author and this may find equal force in patents as well. TRIPS agreement in Art 30 also provides for exceptions with regards to granting patents.

But before focusing our attention on these limitations and exceptions there is a great balancing act within the granting of patents. Unlike copyrights which primarily concerns with the concept of originality a patent must full fill three different criteria, that is ―Novelty, Inventive step and Industrial Application and if an invention is capable of getting over these requirements it is truly worthy of patent protection and this was explained by the Canadian Supreme court in ***(****Bristol-Myers Squibb Co. v. Canada, 2005****)*** by holding that the onerous requirements of patent ability under patent law are balancing strong monopoly rights granted to patentees.

The most difficult thing to prove in order to pass the hurdle is in proving the innovative step. Inventive step is hurdled if the inventor can show that with having regard to the prior art relevant to the patent application claiming the invention such inventive step would not have been obvious to a person having ordinary skill in the art. The most commonwealth countries follow the fourfold testlaid down in *(Windsurfing International Inc v Tabur Marine (CB) Ltd, 1985)***.** As mentioned above if an invention is able to hurdle this requirement only then will it be give a monopoly extending for 20 years. This methodology is a good step in balancing the competing interest of the stakeholders.

One other inbuilt mechanism in trying to achieve a right balance between the competing interests of the stakeholders and the excluded subject matters from being patented may be one such instance. The IP Act of 2003 in section 62(3) declares what are the excluded subject matters which are not patentable. Art 27(2) of the TRIPS agreement (Agreement on the Trade Related Aspects of Intellectual Property 1994) allows each member state to determine what are going to be the excluded matters with regards to public policy and other factors such as morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment.

In a Sri Lankan Context, however the policy makers overlooked the provision regarding the patentability of **Micro Organisms** when they introduced the intellectual property bill to the parliament which was challenged in the Supreme Court (S.C. Special Determination No.16/2003). The bill allowed patenting of **Micro Organisms** but the petitioners claimed that this is too broad and it could seriously affect the rights of the locals to which the court agreed and the section was thus changed to **―and micro-organism other than transgenic micro-organism.** We might as well disagree with Burger CJ when he held that (*Diamond v. Chakrabarty*, 1980) patentable subject matter to include anything under the sun that is made by man, for being too broad.

Another way of balancing the competing interests of the stakeholders is to issue compulsory license for a product. A compulsory license is an involuntary contract between a willing buyer and an unwilling seller imposed and enforced by the state. But one must be very careful in invoking something like this and there must be overwhelming necessities in order to do this as too many compulsory licenses may deter potential inventors since the reward would be limited. The IP Act 2003 does not specifically mention's the word compulsory license as its Indian counterpart under the patents Act No 39 of 1979, sec 84. Under sec 86 (2) (C) one may read the provision as giving the Director General to issue licenses in certain situations which may appear to be compulsory licenses.

The issuing of compulsory licenses may be seen as a necessity with regards to pharmaceutical products. Here the rights of the patent holder and the rights of the society to have access to medicine overlaps considerably. In striking a proper balance the Doha Declaration gave some maneuverability for states to realize the rights of the individuals to have proper access to health facilities and especially to medicines.

In 2012 India granted its first compulsory license with regards to a cancer preventing drug. In *(Natco Pharma Ltd. v. Bayer Corporation, 2012)*where in accordance with the sec 84(a) the controller of patents found the relevant requirements in the section have been met in order to give a compulsory license. The South African Constitutional courts in *(Minister of Health and Others v Treatment Action Campaign and others, 2002)*also emphasize the fact right to health which is granted as a fundamental right under the South African constitution must be taken as the higher norm in deciding the competing interests. With regards to the exceptions to the patent rights the list is not as exhaustive as in the case of copyrights. The IP Act 2003 provides for exceptions by giving the limitations on the patent holders rights in section 86. Parallel imports can be seen as an outside mechanism in balancing the stakeholder's rights by giving them access to goods for other than this method was unaffordable. This will be considered little broadly latter.

IV. COPYRIGHT AND NEIGHBORING RIGHTS

Copinger and Skone James define copyrights law as follows. ―Copyright law is, in essence concerned with the negative right of preventing the copying of physical materials existing in the fields of literature and the arts. Its object is to protect the writer and artist from the unlawful production of his materials (Garnett, Copinger, Skone James, Davies & Harbottle, 2009). Neighboring rights can be defined as rights neighboring on copyrights, to mainly include the rights of performers, broadcasters and phonograms. The Sri Lankan Act uses the words related rights to refer to neighboring rights. In the European Countries which adheres a Civil Law tradition copyrights are Called Authors Rights (Droitd'auteur). But they do share some dissimilarity in that authors rights are more exclusive and are granted only for natural persons. Compared to patents copyrights and neighboring rights does not create a monopoly in any sense but only prohibits the main act of copying. The theories that try to justify copyrights may not have the same appeal as in patents. Michael Spence advances five theories in order to justify the granting of copyrights (McClean & Schubert, 2002).

It is thus summarized as a economic justifications for copyright focus on the need to provide incentives for the creation and dissemination of creative works. For economic theorist's the intended beneficiary of the copyright system is the community as a whole, which demands the production of, and access to, as many creative works as possible. Argument from the desert states that creator of a work deserves control over it. While the Deontological justification advocates that copyrights exist, not to advance the common weal, but to give force to certain ethical obligations owed to creators. The personhood argument states that a work is an embodiment of the personality of the creator. Control over the work is essential to secure the creator 's control over her own personality. One of the most appealing is the argument that is put forward by the advocates of the Personal Autonomy which stipulates that valuing personal autonomy must involve granting an individual at least some control over those things with which she is most closely associated: to allow her to carve out an area of individual dominion. If a creator can show a close association with a particular work, then respect for her personal autonomy may require that she be given at least some degree of control over its use.

The Sri Lankan IP Act of 2003 recognizes both the copyrights and the neighboring rights but the Code of Intellectual Property Act did not recognize the of performers which is now duly protected and has given a proper balance to the stake holders. The normal duration for a copyrighted work is 70 years plus the lifetime of the author. While this time period may seem like too long but one must remember that since neither copyrights nor the neighboring rights grants any kind of monopoly and the main aim is to protect the author 's right of reproduction this time slot may not be as problematic as one may think. However, it is necessary to understand the nature of the product in order to determine its protection duration and as an example, a novel may need a longer protection than computer programs which has a limited life circle.

The Balancing Act

As with patents copyrights also have subject matters which are excluded from being copyrighted. The IP Act of 2003 gives a list of creations that do not enjoy copyright protection. But there are no many controversies with this exclusion as with patents. Again like in the patent law the exceptions and limitations provisions of both droitd'autuer and copyrights are on the whole tailored to specific conflict of interests (Dreyfuss, 2004). Here again the authors rights to exclude the ones who are not willing to pay the original price and the general interests of the society who seeks to get the dissemination of information for as less as possible collide.

As we have mentioned in the case of patents the Berne Convention in Art 9(2) lays down the guidelines for implementing limitations and exceptions. Unlike patents the requirements that are needed to be fulfilled in order to get copyrights are very different. The main criterion is the originality, which simply means that the work was not copied from another source and it derived from the author. In *(University of London press v university tutorial press, 1916)*Peterson J, held that "The word „original" does not in this connection mean that the work must be the expression of original or inventive thought." This is related to the doctrine of "sweat of the brow" which simply means that there is no need for much creativity in order to get copyrights, but some kind of skill, judgment and labor is required. The ease of

which one can get copyrights is balanced by the limitations and exceptions that are given in copyright law which is broader than in the case of patents which tries to strike out a fair balance between the competing interests of the stakeholders.

One of the great balancing act, in itself a limitation, in balancing the competing of the interests of the stakeholders is the dichotomy between ideas and expressions. The law only gives protection to expressions and not ideas. This is a basic common rule-utilitarian concept where it is commonly assumed that allowing authors and inventors rights to control mere ideas would diminish overall social utility and so an idea/expression distinction has been adopted (Moore, 2006). While the expression belongs to the author the idea belongs to the people. This distinction has clearly received judicial recognition. In *(British Northrop Ltd v Texteam Blackburn Ltd, 1974)* Megarry J, held that ―copyright is concerned not with any originality of ideas but with their form of expression, and it is in that expression that originality is requisite. What happens if the idea cannot be expressed in any other way? Where to strike the balance? Such a situation arose in the case of (*Kenrick v. Lawrence 1890).* In this particular case, the issue at hand was whether a picture showing the illiterate peoples how to cast their vote was capable of copyright protection. The court decided that since the picture showing a hand holding a pen marking an X was the most appropriate way to show the illiterates how to vote, no copyrights could be granted. Here since there was no dichotomy between the idea and expression the court strokes the balance perfectly in deciding not to grant copyrights.

One of the main doctrines used by copyright law for the purpose of striking a balance between the interests of the copyright owners and those of the users is fair use. If the alleged infringer can prove that his act was falling under fair use it would avail him of his liability. The IP Act of 2003 does recognizes the doctrine of fair use but it does not define it. But one must always act in caution because if intellectual property rights are designed to prevent overuse of an information resource, permitting significant unauthorized ―fair use‖ by third parties would seem to undermine that goal. One commentator states that fair use permits the use of copyright works, which would otherwise be construed as infringements. However, the IP Act does give a list when the unauthorized use of a copyright work becomes fair but according to Dr. Karunaratna this list is not exhaustive and other uses can also be considered fair(Karunaratna 2006). The IP Act of 2003 does lays down criteria in determining whether the alleged act could be considered as ―fair‖. In brief, it looks at the purpose of the work, nature of the copyright work, the substantiality of the copied work and the effect it is going to have on the market of the copyrighted work. This resembles Lord Denning ‘s observation in ***(****Hubbard v Vosper, 1972****)*** and where he held that ―after all is said and done, it must be a matter of impression. As with fair comment in the law of libel so with fair dealing. The Doctrine of fair use does strike a fair balance in more way than one. But with regards to the IP Act of 2003 there is a fundamental fault which is when read together with section 23 of the fair use doctrine may not apply to works which are in digital format. It is argued that this has brought about a situation where the fair use provisions in the IP Act of 2003 apply only to the copyright material in print form. Further since Sri Lanka is an importer rather than an exporter of copyright works it will not suit the demands of the country. This has enable the copyright owners more protection than what the law must provide for and this lack of exceptions to these prohibitions may result in an imbalance between the rights of owners and those of users of copyright materials.

V. THE ISSUES STILL UNSOLVED

In the above discussion, we have seen how the patent and copyrights regimes have tried and to some degree achieved a fair balance between the competing interests of the stakeholders. Still there remains a great deal of mystery with regards to the areas which have been unable to find a fair balance. Traditional Knowledge (TK) which can be narrowly defined as the collective knowledge of a given society does not enjoy the same kind of protection which the copyrights and patents enjoy. Two main reasons for this are on the one hand TK is too old for protection and in that even if they had been granted with IP rights most of them would have been expired and thus will be in the public domain and for granting IP rights no individual owner could be traced and that it is held by the community as a collective right. But in the modern IP regime geographical indications are protected which are collective rights, so why not TK? The reason as one commentator states (Gervais, 2002)[in response holders of traditional knowledge argue] that the current intellectual property regime was designed by Western countries for Western countries. The heart of the problem lies there. Most of the developing countries are so rich in TK and still they are not able to exploit it as it is not regarded as possessing any IP right or deserve it.

The IP Act of 2003 does recognize folklore as an IP right. But the methodology adopted in protecting that right is little problematic since an infringement only happens if an inventor uses folklore without the permission of relevant authority and what may amount to folklore is thus clearly not defined and the proceeds that are going to be gathered by licensing is also to be put into a fund for cultural development, but the problem is that the proceeds may really not benefit the group of people who have a claim to that folklore. The right balance in this regard has not been struck. Another problematic area is with the invention of employees. If an employee makes a new invention the invention will belong to the employer and not the employee. If the employee is to have any kind of remuneration it has to be of an unexpected value. But if we are to balance the competing interest irrespective of being of an unexpected value whenever an employee makes an invention which is patentable it should deserve to be rewarded as getting a patent or fulfilling the patentable criterion in itself should deserve some credit.

A great argument put forward by Machlup (Machlup& Penrose, 1950) is that patent protection is not needed as an incentive for corporations, in a competitive market, to invest in the development of new products and processes. The short-term advantage a company gets from developing a new product and being the first to put it on the market may be incentive enough. If this can be proven with empirical evidence there might be an even stronger case for reducing the life circle of a patent from 15-20 years to 5-10 years, and it must be considered especially with regards to the pharmaceutical patents where the overwhelming public health issue is at the core.

And this argument is equally supported by Adam More (Moore, 2006) who advocates that Granting exclusive twenty-year patent monopolies is not necessary as incentive to get companies to produce an optimal number of intellectual products. In most industries, a five-year *non-exclusive* monopoly may provide the necessary incentives. One other gray area is the accumulation of IP rights. Imagine a product which is patented, it would enjoy a monopoly of 20 years. If there is no bar, the same invention could be registered as an industrial design. This will give 15 years of protection. Therefor the product will enjoy 35 years of IP rights, even if the patent runs out in 20 years if someone tries to create the same product, since it will now enjoy industrial designs right, will be infringing those IP rights.

This kind of a situation occurred in the case of *(Interlego AG v. Alex Folley (Vic) Proprietary Ltd, 1987)* where the claimant after getting 35 years of protection through the above-mentioned method tried to further extend his rights by getting copyrights in his drawings of the invention which would have given him further 50 years of protection. The court totally rejected the application of copyrights by holding that this is an approach which the courts do not find terribly attractive. The IP Act of 2003 does not preclude getting concurrent protection for the different parts of the product in alternative ways. This is certainly not a good thing in balancing the interest of the Stakeholders as concurrency may delay the opportunity for the society to yield the full rewards for granting the monopoly in the first place. One prominent development which has recently come alive is the Human Rights approach to the protection of IP rights. Even the UDHR (United Nations Declaration of Human Rights)in Article 27(2) does recognize the need for IP rights. But if we are to employ a Human Rights justification of granting IP rights the same could be invoked for limiting its scope as well. Since Human Rights may have a hierarchy of norms and the ones that are at the top may take precedence.

VI. CONCLUSION

We may believe that the law of property is a wise bit of social engineering in the world as we know it, and we satisfy more human beings, secure more interests, with a sacrifice of less thereby than by anything we are likely to device (Pound & DeRosa, 1930). As Roscoe pound advocates IP rights must be of some kind of a compromise between the stakeholders. There might not be such a thing as perfect patent system but there might be a great compromise between the competing of interest which the stakeholders hold. In some cases, one may take precedence over the other like for an example right to health may override the right to property.

Earlier we show how the legislature, policy makers and the judiciary tried to engineer the social structure with regards to IP rights. There while granting IP rights to inventors and authors they also set the limits. The balancing act was a fair compromise between the parties which was mainly achieved by the limitations and exceptions imposed on the inventors and authors. In doing so how the social, political and economic aspects were considered and when they failed to appropriately reconcile those phenomena how the balance shifted from one side to the other. IP rights cannot be considered in isolation, when trying to assess the proper balance all the things that interplay must be considered. The uniformity of the law must not come at the expense of the poor. While developing countries have always argued that IP law only protects the interest of the rich to some extent this may be true as we saw with regards to Traditional Knowledge.

Since IP consumption is non-rivalrous the consumption of one does not hinder the ability of another to consume and the marginal cost (the extra cost that has to be borne to increase the production of one unit) is zero with IP products it is basic economics to considerate a public good and to exclude people from public goods must be strongly justified as well. To this extent the need to engineer the current system is a must. One solution may be to stimulate the production of IP other than granting monopolies may be by a way of government funding for research institutes with a minimum amount of interference. To this Hettinger also agrees by stating that ―we must begin to think more openly and imaginatively about the alternative choices available to us for stimulating and rewarding intellectual labor. IP is a very dynamic concept in law, which is ever evolving and fast evolving. The needs and wants of the society are better provided for by intellectual idea. The conflict of interest which it creates has also evolved from an analog society to a digital society. While stimulating the IP production one must not lose the need for creating affordability and accessibility. This is by no means an easy task. The problem is that the competing of interests is at crossroads and the fair balance or striking a fair balance is almost going to result is imperfection. What the legislature, policy makers and the judiciary must do is to strike a proper compromise between the competing of interest of the different shareholders to the fullest. To put it more appropriately it should be proportionated that is, it must do more good than harm, this may in the end be a utilitarian in nature since we are sacrificing the interest of few for the wellbeing of a lot. But to this we have to settle as earlier mentioned by roscoe pound.

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