

SIGNIFICANCE OF MONETARY DAMAGE AWARDS IN INTELLECTUAL
PROPERTY CASES: IN INDIA AND INTERNATIONAL DOMAIN

A THESIS
SUBMITTED TO THE
STANFORD PROGRAM IN INTERNATIONAL LEGAL STUDIES
AT THE STANFORD LAW SCHOOL,
STANFORD UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
MASTER OF THE SCIENCE OF LAW

By

Girija Krishan Varma

May 2003

Abstract

Monetary damage awards play an important role in the enforcement of Intellectual Property Rights around the world. They are a core element of the legal remedies available to a litigant in any kind of dispute. In the context of Intellectual Property (IP), they hold specific relevance, because of the changing nature of IP from being an intangible good to an intangible asset. Enforcement processes are key to the harmonizing process under the TRIPS agreement, which attempts to organize the members under its umbrella, with respect to the protection and enforcement of IP.

By examining the monetary damage awards for Intellectual Property in India, I have tried to present a viewpoint of the problems faced by a developing country with regard to enforcement of IP. Comparisons have been made between the Indian and American court systems to identify some of the reasons for these developments.

The data gathered includes opinions of IP Professionals and analyses of court judgments. These help to highlight domestic and international discrepancies in relation to the damage assessment procedures. The inferences drawn illuminate those aspects that require domestic and international adjustments to build a global IP regime.

Table of Contents

Abstract	
Acknowledgements	
Introduction	1
I. Remedies Under Indian Laws and Underlying Principles of Damage assessment	9
A. Remedies available in Civil Litigation generally	
1. Ordinary Damages	
2. General or Special Damages	
3. Costs	15
B. Remedies available in Intellectual Property Specifically	18
1. Copyright Law	
2. Trademark Violations	
3. Patent Misappropriations	
II. Implementation of the Substantive provisions of Intellectual Property Laws by the Indian Judiciary	26
A. Background	
B. The Research	27
C. Data	30
1. Court Structure	
2. Methodology	35
a) Data Collection	
b) Interviews	38
c) Examination of Court Records	41
d) Statistical Data	45
D. Data Analysis and the findings	47
1. Preliminary Injunctions	
2. Damages	
3. Costs	
4. Case Settlements	
E. Emerging Picture	66
a) Delays in courts	
b) Misplaced norms	
c) Impermanency of defendant	
d) Pre-disposition	
e) Propensity and "culture"	
F. Critical Analysis of one Intellectual Property Judgment	69

III. Disparity between the Written Law and its Implementation and Litigation Strategies in IP	79
A. Mismatch between Judiciary and Legislative Intent	
1) Principles used to Quantify Damages	
2) Exemplary Damages	
3) Costs	
B. Litigation Strategies (roadmap at Appendix 2)	83
C. Remedies under Criminal Law	93
1) Manifestations of Intellectual Property Crime	
a) "Fly by Night" Operators	
b) Infringements	
c) "Proprietary Rights" in doubt	
D. Evolutionary and Historical Reasons	101
1) Comparisons between the Indian and the U.S. Legal Framework	
2) Costs and Benefits analysis	
IV. Detrimental Effects of the Legal Practices	108
A. India's Domestic IP Regime	112
1) Piracy	
2) Imitation v. Innovation Markets	
3) Under Valuation and Under Appreciation of IP	
4) Stagnation in the Court System	
5) Foreign Direct Investors	
B. Delays in Courts and Relevance of Costs	129
1) Impact of nominal costs	
C. International Domain	131
1) De-harmonization of TRIPS	
2) <i>Forum non Conveniens v. Forum Shopping</i>	
V. Adjustments to the legislative Provisions and Social Milieu	139
A. Why Intellectual Property?	
B. Recommendations	142
1) Legislative Changes	
2) Social adjustments	
Conclusion	148
Appendices	150-153
Bibliography	