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Master's Thesis

Conflicts Between the Freedom of Speech and Intellectual Property Protection

(Copyright and Trademark: Nigeria as a case study)

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ABSTRACT

The study on the conflict between freedom of expression and intellectual property protection aims to focus on the complex interplay between the fundamental rights in the digital age, which has raised a number of important normative issues such as infringement; abuse and violation of the rights of creators, the unauthorized use and dissemination of protected intellectual works, down to the unauthorized use of trademarks that results in goods and services been deceptive or misleading to the public. The advancement of technology and its tools has further complicated the issue by making it easier to infringe IPRs with freedom of expression been used as a defense in cases of intellectual property abuse. As both rights are fundamental in the society, these issues have overtime triggered the need to balance freedom of speech with intellectual property enforcement. This research paper further seeks to explore the IP system Nigeria with a comparison to the European Union's IP legislations and measures of enforcing internationally harmonized system of IP protection both within the EU member states and globally. The proposals within seek to address the conflict between both fundamental rights and practical measures that can be explored to address the flaws within the IP regulatory framework of the EU, to better enhance the global protection of Intellectual property protection and a peaceful coexistence between the conflicting rights of expression and IP amidst the rapid advancement of technology.

Keywords: *Intellectual Property Rights, International Harmonization of IPRs, European Union, IP regulatory Frameworks, Copyright, Trademark, Nigeria Copyright Commission, Conflict, Digital Technology*.

LIST OF ABBREVIATION

IP Intellectual property

EU European Union

IPRs Intellectual Property Rights

WIPO World Intellectual Property Organization

TRIPS Trade Related Aspect of Intellectual Property Rights

EPC European Patent Commission

WTO World Trade Organization

NCC Nigeria Copyright Act

NTA Nigeria Trademark Act

EFTA European Free Trade Association

EEA European Economic Area

ECHR European Court of Human Right

CJEU Court of Justice of the European Union

PCIP Paris Convention on Industrial Property

TEEC Treaty establishing the European Economic Community

INTRODUCTION

Relevance of the Topic:

In the digital era, the intersection of freedom of speech and intellectual property protection, notably in the domains of copyright and trademark have become more complicated. The junction of both rights has long been a topic of legal discussion and examination. As digital material needs to be protected while information is easily shared and disseminated, the conflicts become more intense. There are concerns over the usage of trademarks in domain names and online copyright infringement that make one wonder how to strike a balance between protecting intellectual property and allowing free expression. Internet copyright violations and domain name trademarks threaten intellectual property. Copyright law benefits creators and supports free expression and no creative works would be safe without copyright to prevent infringment. The internet as we see today, allows for unprecedented information flow and expression, this is why IP laws regulates the usage of protected works. Although, Article 17 of the EU Directive holds online platforms accountable for use of copyrighted content, this has sparked debates on the potential impact on freedom of speech. In this rapidly-changing environment, it is not only the enforcement of copyright that has been put into question but also its moral legitimacy. As the global internationalisation of IP laws takes centre stage, this research paper seeks to explores the intricate interplay between these fundamental rights and the impact on a global scale, through examining Nigeria as a case study and drawing insights from USA IP system, with a stern focus on relevant EU case laws, directives, and treaties. The conflict between freedom of expression and intellectual property raises a number of important normative issues, an aspect of which will be dealt with within the scope of this research.

Task:

In order to have a clear and precise outcome of the objectives of my research, the focus of the thesis has been narrowed and divided into 5 chapters that will individually elaborate on specfic areas. The first chapter will draw some comparasion from the USA Copright Act in dealing with current digital challanges affecting IPRs. The second chapter elaborates on the European Union IP frameworks and its treaties and directives in dealing with the both fundamental rights. The third chapter examines Nigeria‘s intellectual property protection legislations as the case study for this research work. The fourth chapter investigates the resolution of the conflicting rights and stricking a balance. The fifth part draws up the conclusion by answering the 4 main research question and lastly outlines recommendation.

Research Questions / Objectives:

This research question intends to look into the numerous aspects of disputes that develop when these rights collide and how the study‘s structure listed themes impact them in providing answers to the following entreat questions;

1. Does the struggle for relevance between the two rights leads to a conflict? Or is the conflict merely prima facie?
2. How does the conflict between intellectual property protection and freedom of speech appear in the digital age?
3. What practical measures can be adopted to enhance a resolution of the conflict to strike a balance between competing rights (considering the legal frameworks, technology and societal perspectives)?

Aim of Research:

This research aims to comprehensively investigate and analyze the conflicts that arise at the intersection of freedom of speech and intellectual property rights. Particularly, seeks to provide an in-depth understanding of the conflicts, challenges, and potential resolutions that emerge at the nexus of freedom of speech and intellectual property. Ultimately, this study aims to contribute to a comprehensive discourse that navigates the complexities of these fundamental rights within the evolving landscape of the digital age. The analysis of my research study will encompass the following:

Chapter 1 of this paper examines the conflict between free speech and copyright and trademark rights in the digital era. It explores how both fundamental rights appear in the digital age, the harm caused by infringing copyrighted works and free speech concerns in trademarks. The digital era has seen clashes between free speech and trademark protection, particularly over domain names, which can compromise businesses and mislead the public.

Chapter 2 will illustrate EU legislation on copyright and trademarks and how it ensures the freedom of expression, including but not limited to EU directives and caselaws. The EU reforms on trademark and the IP Protection in the European Convention on Human Rights is borught to bare.

In chapter 3, the poor IP legislation in Nigeria will be used as a case study in this research. The abuse of Intellectual property rights and the government’s negligence will be brought to bear. Nigeria has three main legal acts governing intellectual property rights: the

Copyright Act of 2004, the Trademarks Act (CAP T 13) 2004, and the Patents and Designs Act (CAP P2) 2004. To safeguard citizens and businesses, these laws were passed in 2004. Nigeria copyright laws are inefficient and rarely enforced. Judicial bodies are reluctant in infringement cases. The EU Converging Impact of Harmonisation and Enforcement of IPRs Frameworks as a Guide to IP Protection in Nigeria and the protection of IP in the European Convention of Human Right ECHR will be discussed.

Chapter 4 of my research paper further transitions into addressing and resolving the conflict between freedom of expression and intellectual property protection, exploring possible means to striking an equilibrium between the obstacles to the competing rights that would have been discussed from chapter 1 - 3. As governments adopt international IP standards, digital free expression may be affected. Avoiding overreach and unforeseen consequences requires balancing multiple legal traditions and cultural sensitivities.

Methods

This research will use a multi-dimensional framework approach to examine freedom of speech and intellectual property using qualitative methodologies, focusing on specific subtopics and aspects to provide a comprehensive understanding of the relationship between both aspects.

1. Literature Review: The research is built around a thorough analysis of academic literature, legal cases, pertinent legislation. This includes combining current theories and viewpoints on each subtopic within the given framework.
2. Document Analysis: To comprehend how issues between freedom of expression and intellectual property have been handled in legal contexts, primary legal documents, including court cases, legislative texts, and treaties, is studied.
3. Content Analysis: public's opinions, and arguments regarding conflicts between these rights is also determined by analyzing digital information.

CHAPTER ONE

INTELLECTUAL PROPERTY AND FREEDOM OF EXPRESSION

1.1 Understanding Freedom of Speech for Intellectual Property in the Digital Age

Digitalization has introduced new opportunities and challenges in IP rights and freedom of speech. The IPRs conflict with upholding one's right to free speech, and as technology advances, the delicate balance between the ability to freely express oneself and the protection of artists' rights becomes more complicated. EU regulations and initiatives in its quest to harmonize the European digital market propsed copyright directives, a significant one of which was the May 2015 Digital Single Market (DSM) policy. The DSM aimed to standardize EU digital environments, remove digital obstacles, and promote a seamless digital market. To boost digital economy innovation, competitiveness, and growth. Also, Article 13, the most contentious provision, mandated internet service providers to use general filters to examine copyrighted works

The directive aims to balance the protection of right holders with the protection of users' fundamental rights, like freedom of expression and creation. There are a number of international documents, such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1976), that protect the right to free expression. The internet has emerged as the most common platform for the actualization of this right in the modern era. While the Internet has made sharing information quick and anonymous, it has also created new obstacles when it comes to IP protection. As the Internet has become the backbone of economic systems throughout the globe, there exist measures to address the digitalization of the global economy to enhance legal certainty so that researchers and schools will make greater use of copyright materials. Securing the boundaries protecting fundamental rights of the public interest is one of the goals of the measures is one suggestion. Nevertheless, the enormous controversy that it has caused suggests that the directive's content does not match up to the expectations it has created. There were some representatives from the digital and cultural markets, as well as jurists, thinkers, and activists who shared their views on the issue.

This subheading of my research work is not concerned with net transparency or the preservation of free speech, but rather the goal is to achieve a legislative framework that both facilitates the emergence of novel digital business models and guarantees adequate and efficient safeguarding of intellectual property rights. More often than not, these business models are frequently the result of the creative and industrial activities of authors, artists,

editors, producers, and, ultimately, business models that are equally deserving of recognition and protection. The lack of logical coherence and fairness in the development of certain businesses at the expense of others is a matter that warrants critical examination and contemplation. We must remember the importance of cultural industries in the framework of the European Union and including the rest of the world, whether in terms of job creation or GDP contribution or in terms of social, educational, and cultural development. It is fair that individuals impacted by such business models, which are often digital as well, would be opposed to their growth if it came at the price of other people's labor.

According to Uzialko (2019), there is a possibility that these actions, in the long run, might lead to more significant financial harm to a company's image. Hence, the unrestricted use of a corporation's trademarks, copyright, patents, etc., is intrinsically linked to the ethical dilemma arising from the intersection of freedom of speech and intellectual property rights[1]. As stated in the previous subheading, copyright, trademark, patents, trade secrets, and right to publicity fall under the term intellectual property. If a defendant is found to have violated one of these rights, they might face severe consequences, including a prohibition on free speech.

Nevertheless, this predicament applies not just to businesses and those who are responsible for the creation of cultural goods but also to people[2]. For instance, the use of the information that I supply on social media platforms might have a variety of implications for both my right to privacy and my own intellectual property. Therefore, the fact that authorities or possible employers have access to it might paint a picture of me as a person who they could evaluate based not on his actions but on the impression he produces online. Yochai Benkler's work, most notably 'The Wealth of Networks[3]', investigates the ways in which decentralized and collaborative forms of creation and expression may be enabled by digital technology. He stresses the need to strike a balance between protecting intellectual property and taking use of digital era prospects, this is why the EU's Copyright regulation aims to control online content sharing platforms by requiring licenses for copyrighted content use or removal, potentially restricting users' freedom of expression[4].

[1] Uzialko, A. (2019). Copyright infringement: Are you stealing intellectual property? Business News Daily
[2] Study Corgi. (2022, October 28). Freedom of Expression and Intellectual Property Rights. https://studycorgi.com/freedom-of-expression-and-intellectual-property-rights/
[3] Yochai Benkler, The Wealth of Networks How Social Production Transforms Markets and Freedom, Yale University Press New Haven and London, 2006 https://www.benkler.org/Benkler_Wealth_Of_Networks.pdf
[4] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market https://eur-lex.europa.eu/eli/dir/2019/790/oj

Defining free speech for intellectual property in the digital era is a never-ending difficulty since it must continuously evolve with growing technology. The interpretation of the intended scope of protection under the new European regulation on copyright on the Internet is deemed flawed, since it primarily seeks to safeguard the interests of major copyright monopolies rather than prioritizing the protection of writers. Contrary to the opposing viewpoint, we contend that it is really feasible to advocate for both the protection of writers' rights and the preservation of an open Internet simultaneously. The new European regulation will not help artists make a living or enhance cultural circumstances. European Parliament members who support innovation and fundamental rights cannot support Articles 11 and 13 of this legislation. The new rule is intended to close loopholes in the existing regulation, however the big question is whether this new regulation has been successful in its implementation?

The internet's use would be rendered null if its founders, editors, writers, scientists, authors and artists lacked trust in its potential and failed to offer their respective contributions to the platform. They claim freedom of speech to justify misusing intellectual property, also their internet defenders do not comprehend the true meaning property which implies respect to the creator's ownership of a work. Until this point, the renowned internet portals maintained the system of take-down notice. This means that the owners of IPR made the efforts of detecting unlawful use of their work, and then protested for it to be taken down[5]. After such protest the portal will indeed remove that content, however, the violators (called a pirate, another name for thief), would repost it rendering the creators' efforts useless. Meanwhile, both the named pirate and the portal itself continued, improperly and with total impunity, to make significant sums of money, in some cases amounting to millions of dollars, through the utilization of sophisticated technology with absolute concealment that prevented them from being caught. The portals that possess knowledge of these abnormalities and consistently include advertising on those illicit websites have to be regarded as complicit entities, either imminently or eventually. There is a widespread consensus that the Internet should be neutral. However, we cannot maintain this neutral stance when the rights of third parties are violated and illicit acts are carried out.to conclude, there is a constant need for regular adjustments and as such, is essential that the society continues to participate in the ongoing conversation and have these debates as well, so that the IP rights and the right to free speech may coexist in modern

[5] Broude, T. (2010, July 22). It's Easily Done: The China-Intellectual Property Rights Enforcement Dispute and the Freedom of Expression. *The Journal of World Intellectual Property*, *13*(5), 660–673. https://doi.org/10.1111/j.1747-1796.2010.00403.x

information age within the context of our cotemporary period characterized by communication and innovation.

1.2 IPR: Divergent Approach to Freedom of Speech

The freedom to express ideas, opinions, and beliefs without worrying about retaliation or restriction is a fundamental pillar in every democratic society. The concept of free speech has a deep history, and its developments in legal frameworks are crucial for the modern community. The fundamental freedom was enacted during the Enlightenment era, which was marked by intellectual ferment, and the defense of individual rights laid the foundation for this essential freedom. Several laws protect freedom of speech. The first being the US Constitution, a notable landmark example that forbids the government from restricting free expression. Also, Article 10 of the European Convention on Human Rights upholds freedom of expression.

Article 10(1) of the ECHR states,

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive ad impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises[6]".

As stated in the 1st Amendment to the Constitution of the United States,

"Congress shall make no law abridging the freedom of speech." This freedom represents the essence of personal freedom and individual liberty. It remains vitally important because freedom of speech is inextricably intertwined with freedom of thought[7]".

While the First Amendment guarantees that no one may be prevented from speaking their mind, the exercise of a person's copyright, trademark, or publicity rights can restrict others from expressing themselves[8]. The discrepancy between these rights is not simply intriguing in and of itself; it also has practical implications. It also highlights how, sometimes unknown to legislators, history and the distinction between common law and statutory lawmaking may yield radically different results between comparable legal rights. Specifically, it shows how various outcomes can be produced by applying different legal entitlements to the same situation. Each and every body of intellectual property law is constantly revising its doctrine in

[6] Article 10 of the European Court of Human Rights
https://www.echr.coe.int/documents/d/echr/guide_art_10_eng

[7] First Amendment Bill of Rights; Constitution of the United States 1791.

[8] Golan v. Holder, 132 S. Ct. 873, 890 (2012) ("[Slome restriction on expression is the inherent and intended effect of every grant of copyright." (citing Eldred v. Ashcroft, 537 U.S. 186, 218-21 (2003))); Eugene Volokh, Freedom of Speech and Intellectual Property: Some Thoughts After Eldred, 44 Liquormart, and Bartnicki, 40 Hous. L. REV. 697, 698 (2003).

order to accommodate the growing need for free speech. Historical contexts, philosophical insights, and contemporary challenges shape the ongoing conversation surrounding the boundaries of expression.

The importance of unrestricted speech is reflected in the constant evolution of doctrine across all fields of intellectual property law. Many states have included this area of law in their national constitutions in an effort to foster innovation while also allowing the creator to profit from his work. In those days, IP was advocated more for political and religious benefit than for the love of invention and innovation. IP can be traced back to the Statute of Monopolies in England in 1624, which tried to control monopolies granted to inventors and emphasized the notion that innovators should be compensated for their innovations. The guild system finally fell apart in the 18th century, long after the stationer's company monopoly had expired in 1694. The Statute of Anne (1710), England's first copyright legislation, emphasized IPP by granting writers a monopoly on their creations. Frequently, there has been a lack of consideration about the obligations that freedom of expression places on the boundaries of copyright and some copyright academics continue to assert, or at least implicitly think, that copyright should be exempt from free speech problems. While said, the fact that intellectual property attorneys in civil law Europe do not take freedom of speech seriously may be explained to some part by the difficulties of comprehending all the complexity of the developing corpus of case law on freedom of expression. It is not acceptable for extremists to put copyright in a sanctuary where it is impenetrable and out of reach. Nevertheless, the freedom of speech should not be sanctified, especially in today's world, where claims of the freedom of expression are sometimes made by business operators in an effort to conceal other commercial objectives. In addition, some limits on free speech may be justifiable, not just in the conventional sense of defamation, but also in connection to the proliferation of hate speech on the internet and in other places. There is no compelling justification to prioritize freedom of speech above all other interests or to hold the belief that it should always take precedent over other civil liberties and rights. Moreover, raising freedom of expression to a higher level does not make any other interests more important. The Berne Convention, signed in 1886, standardized copyright laws worldwide, ensuring international recognition and protection of authors' rights. Intellectual property encompasses various works, including copyrights, and trademarks, requiring distinct legal safeguards.

1. **Copyrights**: Copyrights protect original literary, artistic, and musical works, granting creators exclusive rights to reproduce, distribute, and exhibit their work. Academics

like Jessica Litman have studied the balance between copyright protection and public access to information and culture. The Berne Convention, established in 1886, unifies global copyright regulations. The Digital Millennium Copyright Act 1998 protects digital rights, protects digital works, and combats online piracy in the digital era. Today, nearly all industrialized countries in the world are signatories to the Berne Convention, including the United States (1989) and China (1992)[9].

2. **Trademarks**: Trademarks protect brand identities by separating goods or services from rivals. They preserve fair competition and defend consumer interests, with international agreements like the Madrid Protocol and the Lanham Act providing legal basis.

Intellectual property protection is crucial for innovation and creativity, with key thinkers like Locke, Kant, and Bentham establishing a foundation. Statutes like the Statute of Anne, the U.S. Constitution, the Berne Convention, and the DMCA shape the legal framework. The intellectual property system at play has a significant impact on the nature of these modifications. A representative example between freedom of expression and copyright is the case of Henley v. Devore 2010; "Don Henley and other songwriters owned copyrights to songs The Boys of Summer and All She Wants to Do Is Dance. Defendants Charles DeVore and Justin Hart recorded versions with lyrics referencing politicians Obama, Nancy Pelosi, and Barbara Boxer. The alleged parodies were used in political videos on YouTube. Plaintiffs filed a copyright infringement lawsuit[10]". The issue at hand was for the court to determine whether the defendants' alleged parodies of plaintiffs' songs used in political videos constituted fair use? The court ruled that defendants' repurposing of 'the boys of summer and all she wants to do is dance' was **not fair use**. The fair use doctrine is a crucial legal principle in the legal system of the United States. Under this theory, individuals are permitted to make limited use of content that is protected by intellectual property rights without explicit permission of the owner of that intellectual property. By allowing the use of copyrighted content for purposes such as critique, commentary, news reporting, and education, it serves as a protective measure the right to free speech and acts as a safeguard for free expression. Although, the first fair use doctrine slightly favored the defendants, but the court found that they used the song for commercial purposes, used a substantial portion, and used it in a way that could potentially

[9] Music industry and copyright protection in the United States and China, David Herlihy and Yu Zang, Vol 1, Is 4, Sage Journals, 27 march, 2017.
https://journals.sagepub.com/doi/10.1177/2059436417698061
[10] Henley v. DeVore, 733 F. Supp. 2d 1144 (C.D. Cal. 2010)
https://www.copyright.gov/fair-use/summaries/henley-deVore-cdcal2010.pdf

diminish the market for plaintiffs to license the songs which goes against the exact purpose for which the fair use doctrine was established [11].

The divergent approach between intellectual property rights and freedom of speech highlights how difficult it is to strike a balance between these two basic rights in the digital era. Scholars like Yochai Benkler and Lawrence Lessig, among others, have made important contributions to the discussion by highlighting the need of a nuanced approach that accounts for the promise of digital technology to facilitate free speech and innovation. The ultimate resolution of the contradiction between intellectual property rights (IPR) and the freedom of speech requires continuous conversation and adjustment in response to evolving technological environments. Achieving an optimal equilibrium is vital in order to cultivate innovation, safeguard intellectual property, and uphold the fundamental right to freedom of speech, which serves as a fundamental pillar in democratic societies around the globe.

1.3 Commercial Use and Elevating Economic Harm of Copyright

Intellectual property law often revolves around the complex relationship between commercial use of intellectual property and freedom of speech. When people or corporations use intellectual property-protected resources for commercial reasons, questions arise about infringement and free speech. This complex issue is explained by several legal precedents and theories. As emphasized in the previous heading, the fair use theory in copyright law is vital to balancing intellectual property rights with free expression. Even with a freedom of expression argument, copyright law protects the plaintiff's ability to utilize licensing markets. Copyright theory holds a commercial infringer accountable in order to balance intellectual property rights and free expression. Remember that transformative use is just one factor in the fair use determination. The second part of the original fair use study evaluates economic usage. The courts have a tendency to dislike commercial applications, which they have interpreted as denying the plaintiff a licensing market. The fair use assessment's fourth element, the usage's possible influence on the original work's market, is also essential. Following Supreme Court precedent, courts have typically considered this aspect the most important component in fair use balancing. This section explains why the expressive interests typically at stake in conflicts over copyright are often overlooked in favor of the commercial/noncommercial difference and possible market damages.

[11] Ibid

A. Defining Commercial Use:

The distinction between commercial and noncommercial activities holds considerable significance in the domain of fair use law, although the precise delineation of this dichotomy remains elusive. A pivotal concern in the realm of commercial use and intellectual property (IP) pertains to whether such use exacerbates market harm. Courts often consider the evaluation of the impact on the market value of the original work when assessing the utilization of IP-protected content. The legal dispute of MGM Studios, Inc. v. Grokster, Ltd. (2005) examined this concept within the context of software developed for peer-to-peer file sharing. The court determined that when a technology or service is predominantly employed for the purpose of infringing copyrighted material and causes significant harm to the market, the individuals responsible for creating and providing said technology or service may be held liable for contributory copyright infringement[17]. This legal issue illustrates the need to strike a balance between protecting intellectual property (IP) rights and preventing acts that hurt the art market. When First Amendment freedoms are at stake, courts have broadly construed commercial use to include activities that would not otherwise be considered commercial. In A & M Records, Inc. v. Napster, Inc., the prestigious Ninth Circuit Court of Appeals ruled that peer-to-peer file sharing was commercial exploitation of intellectual goods. Napster's early version allowed users to freely share music files without paying. Users might also parasitically take music from other users' computers without giving them access to their own file repositories. The Ninth Circuit deemed using copyrighted content for free to be commercial because users could obtain what they would typically have to pay for. In Worldwide Church of God v. Philadelphia Church of God, Inc., the Ninth Circuit Court of Appeals went farther by ruling that distributing thirty thousand free copies of a religious journal was a commercial activity. The defendant benefited from using such work since it attracted prospective churchgoers who would donate money. Building on Napster and the Worldwide Church, the Henley judgment is a logical step in intellectual property law. It cleverly uses precedents to prove that using copyrighted content in a political campaign is commercial exploitation.

These incidents demonstrate the risks of the existing ambiguous commerciality definition. By defining profit as more than monetary gain, the courts have threatened to label all unpaid copyright exploitations ‘commercial.’ Infringing copyright nearly always attracts attention, which can be monetized through advertising, business development, church attendance, or

[17] MGM Studios, Inc. v. Grokster, Ltd. (2005)

political campaign publicity. The fair use defence should not disappear just because the plaintiff loses revenue. Fair usage always reduces income. Market damage is already addressed by the fair use test's fourth component; thus, it need not be repeated in the first.

B. Elevating Economic Harm of Copyright

In order to use a harm requirement as a protection for speech in copyright litigation, it is important to carefully think about the different kinds of harm that could come from copyright infringement. It is evident that the Supreme Court, through its consistent jurisprudence, has established that the fundamental objective of copyright law is to furnish a financial impetus for the generation and dissemination of copyrighted works. Consequently, any act of replication that displaces the anticipated markets of the copyright holder is highly likely to result in detrimental consequences for said copyright holder within the market sphere. However, it is important to acknowledge that copyright infringement cases can also give rise to non-market harm. Authors' ethical rights to their creative expressions may affect the courts' perception of replication's harmful effects. Within the scope of these rights, or as an extra measure, it is possible that categories of harm recognized in other areas of law, such as damage to a person's reputation or invasions of personal privacy, could be recognized within the scope of copyright law. The current harm delineation precludes infringement based on ‘copyright dilution’. This pertains to a scenario wherein the utilization of a copyrighted work by a defendant may potentially result in certain detrimental effects on the image or standing of said work, yet fails to engender any harm arising from market substitution. Moreover, it is imperative for the judiciary to abstain from acknowledging any infringement upon the plaintiff's entitlement to refrain from speech or their prerogative to privacy, save for instances wherein the act of duplicating unpublished works is implicated.

The concept of harm within the realm of copyright legislation extends beyond mere commercial harm. In protecting against non-market detriments like disparaging a secured intellectual property, free expression must be considered. A typical copyright infringement occurs when the accused person copies a protected work without altering it. Under other conditions, the accused party replicated a protected intellectual production, changing its meaning, context, or purpose. The academic community calls these applications ‘transformative’. While transformative use is unclear, fair use is likely to generate societal value or make the transformed work an inadequate substitute for the original, resulting in negligible market detriment. Transformative applications may harm the reputation or integrity of protected intellectual property and the lawful owner. The reputation and perception of a

copyrighted short story improve if the defendant successfully adapts it into a film. Metamorphosis may be harmful. The alteration may degrade the plaintiff's copyrighted work or associate it with the defendant's less desirable product. Even if the defendant's use did not cause financial damages, the copyright owner may claim reputational or image damage. As said, the current condition may be called ‘copyright dilution’ because of its remarkable similarities to trademark dilution.

Academics have presented a range of viewpoints regarding the interaction between intellectual property rights and freedom of expression. In his 2004 book titled ‘Free Culture’, Lawrence Lessig presents a compelling argument advocating for a nuanced and equitable approach to intellectual property. Lessig emphasizes the significance of nurturing creativity and fostering innovation within this framework. Professor Lessig highlights the importance of refraining from excessive intellectual property (IP) protections that impede freedom of expression. On the other hand, proponents such as Mark Helprin in his work "Digital Barbarism" (2009) argue in favor of enhanced intellectual property (IP) safeguards as a means to preserve the economic motivations for content creators. They contend that the reduction of intellectual property rights would have negative consequences for both the creative process and the overall cultural landscape. International agreements, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), establish universally recognized standards for the protection of intellectual property. These agreements aim to achieve a harmonious equilibrium between intellectual property rights and societal interests, encompassing the fundamental principle of freedom of expression. The TRIPS agreement provides member states with a certain degree of flexibility in the implementation of intellectual property (IP) protections in order to accommodate public policy considerations.

To sum up, the intricate and dynamic legal landscape concerning the intersection of commercial usage, intellectual property, and freedom of speech. The delicate equilibrium between safeguarding the economic interests of creators and upholding the fundamental human right of freedom of speech continues to be a primary focus for courts, researchers, and politicians. Legal frameworks have the ability to navigate this challenging landscape and ensure the thriving of innovation and free expression in the digital age by considering factors such as fair use, transformative works, and market harm.

1.4 Free Speech Concern in Trademark Law: Rogers Test

The purpose of trademark law is to safeguard the unique identifiers used in the business world. It's crucial in ensuring consumers aren't misled and that businesses are treating each other fairly. Questions concerning the boundaries of commercial speech are raised, however, when the application of trademark law bumps up against free speech considerations. Companies cannot compete without trademarks since they allow them to set themselves apart from competitors. They include things like company logos, catchphrases, and brand names. Protecting customers from misunderstanding and maintaining brand integrity, trademark law provides owners with exclusive rights to use their marks in connection with certain products and services. But when people or organizations want to exploit trademarks for political or ideological goals, free speech concerns emerge. This lingers on the very question: is it possible for the enforcement of trademark rights to encroach on an individual's or entity's freedom of expression? Even though they are not subject to the same amount of increased scrutiny that is given to publicity rights, trademark rights are checked by more broad speech-related defenses than copyrights. This is the case even if copyrights are subject to the same level of scrutiny. Historically, the legislation governing trademarks has served to prohibit the use of marks that are likely to lead to confusion among the general public who purchases goods and services. The primary justification for trademark rights is the promotion of economic efficiency, which may be accomplished by reducing the probability that customers will get confused in the marketplace. To permit the use of trademarks as resources for social communication, however, consumer protection laws may at times need to be relaxed in order to make this possible. Within the context of American culture, it has become increasingly apparent that the lexicon employed by brands has assumed a paramount role in the representation of one's individuality and, moreover, has emerged as a pivotal factor in the establishment of interpersonal connections. Therefore, in a similar vein to the entitlement to publicity, it becomes imperative for the legal framework to endeavor towards harmonizing the prerogatives associated with trademarks and the fundamental liberties pertaining to the expression of ideas. The First Amendment, a pivotal provision within the United States Constitution, serves as a steadfast guardian of the fundamental right to freedom of speech. This cherished constitutional safeguard encompasses a broad spectrum of expressive activities, encompassing not only political discourse but also commercial speech. The scope of safeguarding encompasses the utilization of trademarks for purposes of artistic expression. The landmark legal dispute of Matal v. Tam (2017) brought to the forefront the intricate interplay between the realm of trademark law and the cherished

principles of free speech. The United States Supreme Court rendered a decision wherein it determined that the ‘disparagement clause‘ of the ‘Lanham Act‘, which imposed a prohibition on the registration of trademarks that were deemed offensive or disparaging, was found to be in violation of the Constitution. The aforementioned ruling serves to emphasize the principle that the government is prohibited from engaging in discriminatory practices against speech on the basis of the perspective it conveys, even within the realm of trademark registration.

Within the confines of the European Union, it has been the customary practice for trademark legislation to center its attention on safeguarding the integrity of marks and mitigating the likelihood of consumer perplexity. Nevertheless, apprehensions regarding the preservation of unrestricted speech have similarly surfaced. In the case of Red Bull GmbH v. Bulldog Energy Drink Ltd. (2012), the European Court of Justice (ECJ) engaged in a profound deliberation concerning the intricate interplay between the principles of free speech and the realm of trademark law. The present litigation concerns a contentious matter pertaining to the utilization of the appellation ‘bulldog’ in relation to a beverage of the energizing variety. The esteemed European Court of Justice rendered a decision wherein it was determined that the invalidation of a trademark cannot be solely predicated on its potential impact on the "freedom to make statements" or its alleged contravention of public policy or universally accepted moral tenets. This judicial determination effectively bolstered the fundamental tenet that the scope of trademark rights ought not to excessively curtail the exercise of freedom of expression. Contemporary judicial bodies exhibit a diminished proclivity to automatically presume that the act of engaging in infringing speech categorically fails to engender any constitutional apprehensions under the First Amendment. In certain instances, judicial bodies explicitly invoke the First Amendment in order to acknowledge the occurrence of a conflict between acts of trademark infringement and the exercise of free speech. In the overwhelming majority of instances, courts endeavorto redress matters pertaining to the expression of ideas without having to resort to a constitutional examination. A commonly employed methodology entails the utilization of ad hoc balancing. In conjunction with the ad hoc balancing methodology, contemporary jurisprudence has witnessed the emergence of two distinct mechanisms aimed at redressing the apprehensions surrounding freedom of expression within the realm of trademark law.

1. **The fair use defences**; as delineated in copyright law, provide a legal framework for individuals to utilize copyrighted material in a manner that is deemed fair and reasonable, without infringing upon the exclusive rights of the copyright holder.

2. **The Rogers v. Grimaldi test;** established through judicial precedent, serves as a benchmark for determining the extent to which the use of a trademark in an expressive work may be protected under the First Amendment, balancing the interests of free speech and the prevention of consumer.

The Rogers Test

The Rogers Test has undergone various interpretations and refinements by multiple courts throughout its history. One notable case that exemplifies the expansion of criteria by the Ninth Circuit Court of Appeals is Mattel, Inc. v. MCA Records, Inc. In this specific case, the court determined that the Rogers Test applied not only to artistic works but also to expressive works in general, provided that the utilization of the trademark was integral to the work. This served as the foundation for the court's ruling. The ninth circuit's expansion of the rogers test signifies a growing recognition of the importance of protecting free speech rights within the realm of trademark law. This policy ensures that authors and artists have the ability to incorporate trademarks into their creative works without the undue concern of facing accusations of infringement. In doing so, it safeguards the importance of free expression.

The rogers test is a legal criterion that was developed to resolve the conflict that exists between the rights to trademarks and the rights to freedom of expression. It was named after the case Rogers v. Grimaldi, which was decided in 1989 by the Second Circuit Court of Appeals. Ginger Rogers filed a lawsuit against the producers of a film named "Ginger and Fred," saying that the film infringed on her trademark and that it gave a misleading endorsement of her work. The court decided that the First Amendment protects creative expression and that a restrictive interpretation of trademark law was essential in order to prevent infringing upon free speech rights. The court also concluded that the First Amendment protects the rights of individuals to petition their government[18]. The rogers test is a model that was developed to help find a middle ground. Defendants involved in expressive uses may encounter a possible issue arising from a different branch of trademark theory, which draws inspiration from copyright law. Similar to the early rulings on the freedom of publicity and the fair use analysis of copyright law, contemporary trademark law often use the differentiation between commercial and non-commercial speech as a means to ascertain the extent of protection afforded by the First Amendment. Another critique of the accommodation made by trademark theory for expressive conduct is that the defences based on free speech, as mentioned

[18] Rogers v. Grimaldi, 875 F.2d 994 (CA2 1989)
https://casetext.com/case/rogers-v-grimaldi/analysis?citingPage=1&sort=relevance

earlier, sometimes need intricate factual examinations that bear resemblance to the conventional analysis of probability of confusion. An illustration of this may be seen in the ninth circuit's use of the nominative fair use test, which involves an inquiry into whether the defendant's use of the plaintiff's mark implies an endorsement by the plaintiff. The present inquiry bears a striking resemblance to the core issue underlying the consideration of possibility of misunderstanding: does the defendant's use have the potential to cause confusion among consumers? As a result, defendants who possess uncertainty about the outcome of this factual examination or lack the determination and means to pursue a case via summary judgment often yield instead of actively pursuing judicial validation of their rights to freedom of expression. The indefinite character of the Rogers test and the ad hoc balancing procedure may both be subject to similar criticisms. According to the research conducted by Bill McGeveran, trademark defences that involve reimporting the examination of probability of confusion and cannot be addressed at an early stage of the litigation process provide less reassurance to defendants who engage in expressive use of trademarks[19]. The user's text does not provide any information or context therefore, it cannot be rewritten. This critique of trademark law is likely to be correct if defendants are coerced into relinquishing valid expressive defences due to the exorbitant expenses associated with litigation, it might be argued that trademark law is not functioning in accordance with its intended purpose.

In essence, the European Union's trademark law is effectively administered through the EU Trademark Regulation (2017/1001) and the EU Trademark Directive (2015/2436). Although the European Union lacks a direct counterpart to the rogers test, it acknowledges the significance of striking a delicate balance between safeguarding trademark rights and upholding the principles of free expression. The European Union's trademark legislation encompasses a notable provision, namely Article 14, which grants an exemption to the utilization of a trademark from any infringement claims. This exemption is applicable when the use of said trademark becomes indispensable in order to indicate the intended purpose of a specific product or service[20]. Notably, this provision finds particular relevance in instances of comparative advertising or when referencing a third party's trademark. While the European Union has established distinct regulatory frameworks, it concurrently acknowledges the significance of incorporating provisions for the protection of freedom of expression within the

[19] Confusing Isn’t Everything, William McGeveran, Vol.89, Is.1, Article 6. https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1703&context=ndlr

[20] Regulations (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trademark, EUR-Lex, Access to European Union Law.

realm of trademark law. The intersection between trademark law and free speech has been debated by legal scholars[21]. Barton Beebe, for example, advocates for a nuanced view of trademark law that supports adaptation to harmonize expressive mark uses while protecting free expression. Mark Janis, a renowned academic, advocates for clear and predictable criteria to protect trademarks while allowing limited exemptions for free speech.

In our progressively interconnected and expressive society, where trademarks frequently intersect with artistic, cultural, and political expression, it is imperative to acknowledge the significance of the Rogers Test and analogous principles within European Union law. These legal frameworks serve as crucial safeguards, ensuring the protection of both trademark owners' rights and the fundamental principles of free speech. The preservation of this equilibrium is of utmost importance in order to prevent trademark legislation from excessively impeding innovation, critical analysis, the vibrant interchange of concepts within the public sphere, and ultimately, upholding a just and competitive economic environment.

[21] Feldstein, M. (2007, November 1). *International Economic Cooperation*. University of Chicago Press.

CHAPTER TWO

THE EUROPEAN UNION LEGAL FRAMEWORK

2.1. Harmonization of IP and Freedom of Expression in the Information Society

In the context of intellectual property protection and freedom of speech in European Union, some directives and regulatory legal frameworks addresses this. However, there are two most important key legal instruments that touch upon this issue in our information society which will the focus of this subheading. They include;

1. Article 3(1) of Directive 2001/29/EC of the European Parliament and of the council of 22 May 2001, on the harmonization of certain aspects of copyright and related rights in the information society[22].
2. The Charter of Fundamental Rights of the European Union (CFREU) Article 11 freedom of expression and information. This corresponds with Article 10 of the ECHR[23]. Nonetheless, it is also subject to certain limitations and conditions prescribed by law according to Article 52(1) and (3) of the Charter.

The above EU Directive and EU's bill of rights, demonstrates rules that consign the protection of intellectual property and freedom of expression in the information society.
Article 11 of the CFREU in particular ensures the right to freedom of expression and information. It provides that:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers[24].

Article 17(2) of the Charter provides that 'intellectual property shall be protected[25].

Directive 2001/29/EC concerns the legal protection of copyright and related rights in the framework of the internal market, with primary focus on the information society (technology). This also provides that:

[22] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001, Article 3(1). Official Journal L 16 , P.10, 22/06/2001.
[23] Charter of Fundamental Rights of the Eruopean Union, 2012/C 326/02, Article 11 (1) Freedom ofexpression and information. Official Journal of the European Union, 26/10/2012.

[24] ibid
[25] ibid

'Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them[26]*.'*

The directive aims at harmonising aspects of copyrights issues in the technology age within the Union's member states with a primary focus on the protection of rightholders, yet still acknowledging the importance to balance this right with other fundamental rights like the freedom of expression by enabling a framework for the exploitation of works and the forgoing of other protected subject matter. It is noteworthy that the harmonised legal framework supports the functioning of the internal market, stimulates innovation, creativity, investment, and content production, and promotes cultural diversity while highlighting the European common heritage. When it comes to the aspect of technological advancement, the multifaced issues between the both fundamental rights discussed in this research become more complex in line with the ever-growing technological advancement that tranforms the method of creation, dissemination and exploitation of works. It is important for relevant laws to be future-proof so as to not restrict digital growth, which as we know has become a curcial aspect of our world today. As the world seeks to discover and uncover in the light of new electronic environment, it becomes of utmost importance to supplement the existing union copyright framework whilst maintaining a great standard of protection for related rights.

As the quest to continuiously adapt the legal frameworks to address new and existing challenges in the information age increases, the same technology that has aided in the conflict between both fundamentsl rights, can also be a tool in striking the balance between the protection of intellectual property rights and safeguarding the freedom of expression through the creation of technological solution. This can be implemented in a number of ways such as; content recognition by developing and using cutting-edge content recognition methods to detect and fix copright breaches. Another way is through blockchain, owing to its decentralized and transparent nature, can be utilized to create tamper-proof records of intellectual property ownership and transactions. which can help creators and the users to better understand and respect copyrights. Technology offers solutions, but its implementation and regulation must be carefully considered to balance intellectual property rights and freedom of speech. Hence, legal frameworks need to evolve to address these challenges while upholding fundamental rights.

[26] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001, Article 3(1). Official Journal L 16 , P.10, 22/06/2001.

2.2 The EU Reforms on Trademark Laws: Hierarchy or Complexity?

One of the fundamental considerations within the realm of human rights protection pertains to the individual who possesses a trade mark, as they assume the role of proprietor of a distinct property right. The scope of this proprietary entitlement is delineated by the fundamental purpose of the trademark. The safeguarding of property rights is commonly enshrined within domestic constitutions, yet it is not a customary characteristic of international human rights preservation. Neither the International Covenant on Civil and Political Rights nor the International Covenant on Economic, Social, and Cultural Rights incorporate explicit provisions pertaining to the protection of property[29]. The European Convention on Human Rights protects property not in its main body but only through the First Protocol, which was added later. Article 1 of the First Protocol provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions, but the rule allows interference with this right subject to a proportionality test that balances individual interests against those of the public. Article 1 only applies to the person's existing possessions and does not guarantee the right to acquire possessions. The meaning of 'possessions' is not confined to tangible objects but includes intangible property and rights, such as planning permissions, company shares, business goodwill, and patents. To prove ‚possession', ‚property', or ‚biens', you need to show that the right or interest has monetary value and that there is a reasonable hope of enjoying this right in a meaningful way.

Freedom of speech, protected in international human rights covenants, can sometimes conflict with trademark use. This issue is explored in two hypothetical scenarios: when a trade mark held by a person or business is used in a way that may violate public policy or order, and when an external party uses a trade mark without the owner's permission, usually outside of economic transactions. The potential conflict between the utilization of intellectual property rights for commercial purposes and the safeguarding of creative expression, such as parody, is a matter worthy of consideration. Instances of such collision may be observed within the realm of the fashion industry. A notable example can be drwan from the case of Puma v Pudel 2015-German Trademark (case no. I ZR 59/13), The German Federal Supreme Court (Bundesgerichtshof) ruled on the legitimacy of a trade mark parody that was created using a

[29] Campbell, J. (2021, June 1). Where is the growing conflict between copyright and fundamental rights headed? *Journal of Intellectual Property Law & Practice*, *16*(6), 626–626. https://doi.org/10.1093/jiplp/jpab100

previous well-known trade mark[32]. In 2006, the defendant, a T-shirt designer from Hamburg, registered the word/device mark No. 30567514 ‘Pudel‘ (meaning ‘poodle‘ in German) together with a picture of a ‘leaping poodle‘ at the German Patent and Trademark Office (GPTO). The plantiff – Puma SE, a renowned sports equipment company, owned German word/device mark No. 954 023, which includes the term ‘Puma‘ and a depiction of a leaping wild puma, since 1977. The plaintiff requested the annulment of the defendant‘s trademark on the grounds that Puma SE believes the defendant is violating their trademark rights unahppay with the parody. The Hamburg District Court ruled against the defendant to cancel his trademark. (The Higher Regional Court rejected defendent‘s appeal). The Bundesgerichthof ruled that despite apparent similarities, the defendant unfairly exploited the distinctive character and repute of the earlier ‘PUMA‘ trade mark, despite not causing confusion.

The Federal Court of Justice upheld the Higher Regional Court's decision that the two signs are similar in trademark law, despite their differences. The court ruled that the defendant exploits the plaintiff's well-known trademark's distinctive character and reputation, gaining attention for his products. stating that, the owner of a well-known trademark can request the cancellation of a trademark if there's no likelihood of confusion but where consumers would mentally relate both marks due to their resemblance. The defendant also failed to use the defense of the fundamental human right to freedom of speech or art, protected by Article 5(1) and 5(3) of the German Basic Law, respectively[33]. The court ruled that both rights had to give way to the well-known trade mark owner's rights. The German constitution, the Basic Law, guarantees certain rights. The defendant's freedom of art and expression did not include the right to trademark similar products.

This case above highlights the intricate balance between safeguarding the rights of trademark owners and upholding the values of freedom of speech. While free speech is a fundamental aspect of any society, it is not absolute. This places a significant responsibility on the court to carefully balance the rights of free speech with the legitimate protection of trademark holders. The court must consider whether the use of a trademark is for expressive or artistic purposes and also assess whether such use is likely to cause confusion or dilution. Courts often consider fair use and parody as forms of free speech, and a trademark's use may be considered more favorably in free speech concerns. This determination depends on factors

[32] Dogged pursuit of a trade mark parody: Puma v Pudel in the Bundesgerichtshof, 2015 (case no. I ZR 59/13) https://ipkitten.blogspot.com/2015/04/dogged-pursuit-of-trade-mark-parody.html
[33] ibid

like the purpose, character, trademark nature, and market impact. A more recent case in which this was analysed in the Supreme Court of Denmark in Eriksen vs. Berlingske 2023[34]. The Supreme Court of Denmark has issued a judgment clarifying the parody exception in Danish law, providing guidance on using copyrighted works for parody or satire, reflecting a growing recognition of the value of parody and satire in contemporary culture. The case involved a dispute between the heirs of copyrights to the iconic 'Little Mermaid' statue (claimants) and a Danish artist (defendant) who created a series of drawings incorporating elements of the statue. one representing the statue with a zombie face and another with a facemask. These images were published In 2019 and 2020 by Berlingske newspaper to illustrate a story on Danish debate and to link the far right to COVID-19 fears. They were intended for political satirical purposes. The artist was sued for copyright infringement, alleging that his drawings copied the original statue without authorization. The Danish Supreme Court ruled in favor of the heirs, but the artist appealed in the Danish Supreme Court which applied the test established by the European Court of Justice in the 'Deckmyn' case to determine whether a work constitutes a parody or satire. The court ruled that the parody exception applied in the case, as the drawings were intended for satirical purposes and did not commercially compete with the original work or harm the copyright owner's economic interests.

The Supreme Court's verdict shows that Danish and EU law recognizes parody and satire's role in free expression and creativity. Court allows copyrighted works to be parodied or satirized. Both rights are fundamental, and conflict can arise in areas like artistic expression, parody and satire, etc., where a mark is perceived to infringe on free speech. These two objectives can conflict, causing friction between intellectual property and free expression. The second case shows that legal systems weigh possibility of misunderstanding, consumer deception, nature of the speech, and trademark owner's harm differently. Legal concepts and precedents vary by country, and court rulings shape free speech and trademark protection.

2.3. IP Protection in the European Convention on Human Rights

The ECHR underpins Europe's human rights protection. Many essential rights are covered. IP protection is essential to innovation, creativity, and economic growth in legal

[34] Supreme Court of Denmark, Eriksen vs. Berlingske [17 May 2023]
https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/New_Case_Law_en.pdf

rights. Next, we analyze how the European Convention on Human Rights (ECHR) safeguards intellectual property via legislation, scholarly study, and judicial judgments. IP is vital to the EU economy. IP-dependent industries make over 45% of EU GDP. Their €6.6 trillion EU economic value shows their relevance. These firms employ about 30% of EU workers. IPR protection is essential to the EU's single market. In several fields, EU enterprises are global leaders. These include clothing, luxury things, and drugs. Promotion of innovation, creativity, employment, and competitiveness is needed. These are vital for EU global competitiveness. Ineffective IPR enforcement hinders innovation and creativity, lowering investment. IPR enforcement is essential to internal market success.

Many important human rights and freedoms are guaranteed under the European Convention on Human Rights, recognized by 47 European governments, including the EU. Free speech, as established in international and state law, is most likely to conflict with copright and trademark amongst other branches. Article 19 of the International Covenant on Civil and Political Rights and local constitutions acknowledge this right. The European Convention on Human Rights provides for free speech under Article 10. Article 10(2) limits this vital right. The case of Neij and Sunde Kolmisoppi v. Sweden (40397/12, 2013) analysis an example of Article 10 of the ECHR in regards to freedom to impart and receive information. The court decison in the proceeding refers to the convention and order to pay damges for operating one of the world‘s largest file-sharing internet services website called ‘The Pirate Bay‘. Which allowed third parties to breach copyrights by files sharing[41]. In 2005 and 2006, applicants Mr Fredrik Neij, Swedish national and, Mr Peter Sunde Kolmisoppi finnish national,worked on various areas of ‘The Pirate Bay‘ (TPB), a global file sharing website. TPB enabled users to share digital files and communicate using torrent files. In 2008, the applicants and others were accused with violating the Copyright Act by facilitating the infringement of copyright in music, films, and computer games by internet users. The applicants were found guilty. The first petitioner was sentenced to 10 months in jail and the second to eight months on appeal. Their combined liability with other defendants resulted in damages of almost EUR 3,300,000. The applicants provided means to impart and receive information to others under Article 10, but they were still in violation as their convictions were only for copyrighted material, not their freedom of expression. In judgment, The court weighed the applicants' interest in information

[41] Neij and Sunde Kolmisoppi v. Sweden (dec.) - 40397/12, 2013. https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-117513%22]}

sharing against copyrightholders' rights. Copyright is protected under Article 1 of Protocol No. 1 to the Convention, and the respondent State had a wide margin of appreciation. The Swedish authorities had an obligation to protect the plaintiffs' property rights, and the applicants' activities within the commercially run TPB amounted to criminal conduct. The prison sentence and damages were not disproportionate, as the applicants failed to remove the impugned torrent files and were indifferent to the fact that copyright-protected works were shared via TPB. The decision of the court in this case shows the extend to which court needs to extensively investigate issues pertaining to both fundamental rights in other to draw a fair and precise line to aviod abuse. Hence the reason why s.20 of chapter 2 permits legal restriction on freedom of expression and information, however, most adhere to chapter 2, s.21 and 23 to comply with achieving acceptable goals in our democratic society. In the forbearing, it is vital that the restrictions do not exceed the required scope or threaten the free formation of opinion and it should not be based solely on political, religious, cultural, or other viewpoints. As in the case of *Melnychenko v. Ukraine*, 17707/02, Council of Europe: European Court of Human Rights, 2004, Criticism of an author's work in a local newspaper, and refusal of the newspaper to publish the reply of the author[42]. The applicant is an author who was criticized by a local newspaper for its poor literary and linguistic quality. The author responded by harshly criticizing the writer, who also wrote the reviews. The newspaper refused to publish the author's reply as demanded, leading the applicant to seek compensation. The courts found the author's personal opinion in the articles, and the refusal to publish the reply was justified due to the author's abusive remarks, his ground for refusal was provided for by s.37 of the Press Act. The applicant argued that the refusal to publish his reply raised an issue under Article 10. The court also dismissed as being unsubstantiated the applicant's complaint about an alleged violation of his copyright. Applicant's appeal was unsuccessful, as the Court of Appeal upheld the decision of the first-instance court. It also observed that the impugned articles contained opinions, not facts, and that their content could not therefore be examined in terms of veracity. The Court ruled that the right of reply, a crucial aspect of freedom of expression, falls within this provision, but it does not grant an unlimited right to access media, as private media should have editorial discretion.

[42] *Melnychenko v. Ukraine*, 17707/02, Council of Europe: European Court of Human Rights, 2004 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-70089%22]}

Section 1.1 of Article 1 (Obligation to Respect Rights) emphasizes that all parties must respect person and entity rights, as this paragraph underscores. States parties shall rigorously protect and realize Article 1 ECHR rights and freedoms. The promise indirectly affects intellectual property rights, emphasizing the need for strong legal and judicial systems. Family and private life are protected by Article 8. Personal liberty and family connections are protected by IP law. It protects privacy. Privacy, family, home, and communication are protected by Article 8 of the ECHR, honoring people's dignity and value. This essay has been utilized in intellectual property lawsuits to promote creativity and intellectual property protection. Intellectual property law relies on Article 10 free expression. This clause protects and promotes creativity and innovation in several international and national laws. Article 10 protects free speech and information against government intrusion. The section recognizes the necessity for a unified intellectual property policy that promotes innovation and free speech.

Human rights and trademarks conflict. Educational tradition and the split of legal studies into public, international, human rights, and private and commercial law contribute to this. Thus, private and commercial law prevail. Directive 2004/48/EC harmonized intellectual property enforcement among EU member states in 2004. This directive guarantees IP owners effective remedies to safeguard their rights. Strengthening intellectual property protection while balancing individual rights supports the ECHR. Trade mark law, which looks less significant than copyright, raises human rights problems. Academic research on the European Convention on Human Rights and IP reveals a balance. Academics say IP rights are necessary for innovation and creativity, but overprotection might limit competition and information. IP protection is important, but researchers warn overprotection may impede creativity. Balance between intellectual property rights and other fundamental human rights like free expression is essential. Human rights are being asserted to restrict commercial interests as trade mark rights grow into more human activities. European and American courts have examined freedom of expression in trade mark infringement cases including imitation or criticism. Human rights in business have repeatedly alarmed judges. Several important European Court of Human Rights rulings have defined the Convention's intellectual property rights framework. In Ashby Donald and Others v. France (2015), the ECHR decided that France's customs seizures to safeguard intellectual property rights were proportionate and did not breach Article 8. The European Court of Human Rights recently upheld this stance at the highest level for European Convention signatories.

Human rights enforcement is effective in Europe, but international human rights concerns are uninspiring. International human rights agreements that include commercial or trademark problems frequently lack a strong enforcement mechanism, hence their human rights clauses seldom have an effect. The European Convention on Human Rights is crucial to protecting intellectual property rights in Europe. Since it does not specifically address intellectual property (IP), the Convention provides a foundation for IP rights through its provisions on privacy, free speech, and human rights. The aforementioned protection is further strengthened by EU regulations and European Court of Human Rights rulings. Enforcement poses unique issues and complications that require thorough investigation. An effective technique would integrate fundamental human rights with business law to enable their execution within its legal framework. In this instance, human rights should establish an individual's claim, not business law. The European Convention on Human Rights (ECHR) and intellectual property law interact dynamically. Judicial bodies and academic experts are defining and refining this complex connection. The above proposal would resolve the horizontal effectiveness of human rights issue. Certain requirements must be satisfied for international human rights to impact international trademark law. As often happens today, these entities would stay the same.

CHAPTER THREE

NIGERIA LEGISLATIONS AND EUROPEAN PERSPECTIVES

3.1. The EU Converging Impact of Harmonisation and Enforcement of IPRs Frameworks as a Guide IP Protection in Nigeria

Harmonization and enforcement of Intellectual Property Rights (IPRs) regulatory frameworks in the EU influence innovation, trade and commerce, and IP protection. This convergence has many crucial aspects which I seek to highlight in this sub heading. It is imperative to note that without international legal protection, technical solutions cannot permanently enforce global media market rights. Regulations, directives, and international IP agreements form the EU IPR framework[43]. It protects EU and national IPRs in all EU Member States, unifying the system. The Commission enforces counterfeiting and IPR using several means. The IPR enforcement directive (IPRED) ensures strong, equitable, and uniform internal market protection. Customs officers enforce IPR on goods under their authority under the customs enforcement rule.

The safeguarding of intellectual property rights (IPR) within the European Union is a paramount concern, overseen by the European Commission and various other agencies operating within the EU framework. The collaborative efforts undertaken by the entity in question involve engaging in cooperative endeavors with member states of the European Union for the purpose of safeguarding and upholding intellectual property rights (IPRs). The diligent focus of our attention is required for the imperative tasks commissioned. In the pursuit of achieving harmonization and establishing a consistent legal framework for intellectual property rights (IPR), diligent endeavors were undertaken to synchronize and align the pertinent laws governing intellectual property across the member states of the European Union (EU). The endeavors were undertaken with the aim of establishing comprehensive standards and safeguards across the European Union. The aforementioned endeavor has notably augmented the level of legal assurance for creators and enterprises engaged in cross-border activities within the European Union. This achievement has effectively mitigated the intricacies and financial burdens associated with traversing divergent intellectual property legislations prevailing in distinct member states. The comprehensive inclusion of market integration within the European Union has been a notable development, as evidenced by the progressive realization of the unfettered movement of goods and services, as well as the facilitation of

[43] Juozaitis, M. (2018, July 1). Lithuania and EU Harmonization of Customs Infringements. Global Trade and Customs Journal, 13(Issue 7/8), 290–295. https://doi.org/10.54648/gtcj2018034

intellectual property exchange among member states throughout the course of time. Creating a robust enforcement framework for intellectual property rights (IPRs) protects artists, innovators, and businesses. As a disincentive against intellectual property infringement, this encourages research, development, and creativity. Legal remedies constantly provide EU right holders with accessible and readily available ways to assert their rights. The European Union's IPR harmonization and enforcement efforts are a worldwide model. As a major economic power, the EU influences worldwide intellectual property rules. Harmonization and enforcement of intellectual property rights (IPRs) in the European Union (EU) boost integration and innovation. The European Union promotes innovation, economic growth, and global competitiveness via strong protections and effective enforcement. The interplay between the harmonization and enforcement of Intellectual Property Rights (IPRs) regulatory frameworks within the European Union (EU) presents a noteworthy framework for navigating the complexities associated with the deficencies of IPRs in Nigeria. To guarantee uniformity throughout Nigeria's multiple intellectual property laws, a full reevaluation and assessment of IPRs is needed. Nigeria must realize that harmonization is worldwide and concentrate on discrepancies. As the world has become a village, technology is needed to speed up enforcement. Monitoring, recognizing, and reporting infractions using digital technologies may do this. Apart from being inadequately implemented, intellectual property rules are hard to obtain and excessively costly for SMEs and individual creators. Like the EU, international collaboration is crucial. Due to active participation in international forums and alliances like the World Intellectual Property Organization, global best practices may be maintained. Nigeria must break the regulatory cycle and welcome new developments, such as bilateral agreements with intellectual property rights-advancing countries and territories, share experiences, and boost international ties. If Nigeria can take such a brave step, it will handle its unique intellectual property concerns and prospects. is this to say that European Union has been completely successful and has a perfect system in place for the implementation of IPRs regulatory framework? Absolutely not. But as a matter of fact despite the shortcomings, the European Union's intellectual property law is sturdy and resilient. The European Union (EU)'s continued efforts to harmonize its regulatory framework demonstrate its commitment to creating a model intellectual property rights (IPR) system. The European Union (EU) courts, particularly the respected European Court of Justice (ECJ), have made authoritative rulings that help harmonize and enforce intellectual property rights. The following decisions clarify and strengthen intellectual property rights (IPR) protections, promoting EU legal

harmonization. The European Court of Justice (ECJ)'s rulings on copyright, patent, and trademark disputes shape EU member states' IPR enforcement. Institutional bodies like Eurojust enforce intellectual property rights (IPRs) across borders, demonstrating the need and usefulness of international legal frameworks. The effectiveness of EU harmonization depends on all member states' efforts to adopt and enforce EU directives and rules, regardless of the procedures used. Resource capacity and availability affect member state IPR enforcement. These efforts are ongoing and may vary in intellectual property rights. The EU's ability to address new issues and ensure consistent enforcement will be carefully examined.

3.2. Methodical Approach to Nigeria's Copyright-Free Speech Dispute

The Federal Republic of Nigeria, referred to as the 'Giant of Africa' due to its substantial population, is situated on the western coast of the African continent. Nigeria, being the most populous nation in Africa and the seventh most populous globally, has a notable yearly growth rate of 2.9%. Nigeria, with a land area of around 923,768 square kilometres, stands as the largest economy in Africa. Furthermore, it is expected to have a population of over 225 million individuals, as per the latest worldometer estimate at July 16, 2023.

The genesis of copyright law in Nigeria may be traced back to its colonial ties with the United Kingdom, as is the case with many facets of Nigerian law. In particular, the Statute of Anne has significant relevance when examining the evolution of copyright law in Nigeria. Prior to Nigeria's attainment of independence in 1960 and in the subsequent years, the regulation of copyright matters was governed by the English Copyright Act of 1911[44]. Undoubtedly, the incorporation of the English Copyright Act into Nigeria's legal system in 1912 introduced a legal structure for copyright protection. However, the Act's influence on Nigeria's daily operations was limited, potentially attributed to the cultural disparities between the United Kingdom (the Act's place of origin) and Nigeria (the Act's application context). Prior to the year 1911, written communication and the articulation of ideas, whether they were original or not, in a tangible format had been the prevailing method of expression in the United Kingdom. In contrast, communication in Nigeria mostly relied on verbal means and was not reliant on written forms. The governance of copyright in Nigeria was first established after the English Act of 1911, specifically by an order in council No.912 dated 24th June 1912. However, this arrangement remained in effect until the enactment of the first Nigeria Copyright Act on 24th

[44] A Brief of Copyright Law, Isochuckwu
https://isochukwu.com/2018/06/19/a-brief-history-of-copyright-law/

December 1970, which was approved as a decree. The Copyright Act of 1970 included provisions pertaining to the qualification of works for copyright protection, legal measures against copyright infringement, as well as the licensing and assignment of copyrighted materials. However, the Act has been barely a success as a result of poor enforcement and inplementation by the institutions responsible for copyright regulations, hence exacerbating the widespread occurrence of copyright infringement The concept of author's rights refers to the legal and moral protections granted to creators of original works, such as literary, artistic, the inadequacies of the 1970 Act necessitated the introduction of the Copyright Act of 1988, which underwent further amendments in 1992 and 1999. The CA 1988 includes provisions for the formation of the Nigerian Copyright Commission. Nigeria's constitutional framework recognizes and conforms to international standards for freedom of opinion and expression, as well as related rights such as freedom of conscience, thinking, and press.

Article 19 of the revered Universal Declaration of Human Rights affirms freedom of speech as a basic right for everyone. The African Union (AU) recognizes the legal importance of freedom of information and speech. The 1999 Nigerian Constitution, as modified, strongly protects free speech. Section 39 of the Constitution grants the press a constitutional right, jurisdiction, role, duty, and obligation[45]. This responsibility has been sustained and acknowledged by successive Nigerian Constitutions throughout legal history. Section 22 of the Constitution recognizes the media as the 'Fourth Estate of the Realm'. Thus, the media monitors the government and its agencies, assuring their vigilance and responsibility. How then does the same universally acceptable right recognised as an essential tool to keep government in check to the favour of the citizens, collide and infringe on the intellectual rights of others?
The Bill of Rights in Nigeria acknowledges and affirms the fundamental right to property. In accordance with established legal principles and norms, it is pertinent to note that the aforementioned statement, 'accordingly; no movable property, or any interest in an immovable property, shall be subject to compulsory possession, nor shall any right or interest in such property be acquired compulsorily in any region of Nigeria, unless done so in accordance with the prescribed manner and purpose as stipulated by law. The public interest objective of copyright law is to create a balanced and fair system that protects the proprietary interests of copyright holders, including individual creators and corporate entities. This purpose also addresses the public's main concern: scientific development, creative innovation, and cultural enrichment. Numerous academic studies show that Africa's copyright frameworks are

[45] Section 39 of the 1999 Constitution of the Federal Republic of Nigeria

inappropriate and fail to defend the public interest. Unfortunately, the current frameworks fail to support researchers, libraries, and archives, whose vital contributions to information dissemination and education cannot be over-emphasized. The deficiency is exacerbated by modern artificial intelligence (AI) research and the digitization of education.

Consequently, it is not uncommon for entities operating within different jurisdictions to seek necessary alterations in order to align with their respective legal obligations or entitlements. The legal landscape surrounding intellectual property rights in Nigeria exhibits a certain degree of ambiguity and lack of clarity. The present chapter undertakes a comprehensive evaluation of the myriad challenges confronting the realm of intellectual property rights within the jurisdiction of Nigeria. The Nigeria intellectual property law acts statutes serve as the bedrock of the country's intellectual property regime, providing the necessary legal mechanisms to safeguard and regulate various forms of intellectual creations and innovations. While certain regulations have indeed undergone amendments, it is crucial to acknowledge their inherent limitations in effectively addressing the emerging challenges stemming from technological advancements and the ever-expanding scope of globalization[46].

3.3 Irreparable Harm and the Poor IP legisalation in Nigeria

The government's refusal to adopt new laws to address these issues is disappointing and has resulted in poor implemtation and interpretation of the legal acts by the bodies responsible for IP regulations in Nigeria. Nigeria’s IP regulations barely cover software, the internet, privacy, or competition. Illegal literary reproduction and commercial distribution are governed by the Copyright Act. Internet copyright violation is becoming more varied. The law doesn't clarify owner’s rights enforcement. Nigeria keeps traditional terms, phrases, and more. Despite commendable attempts, several governments have approved unorthodox trademarks. Entrepreneurs may hesitate to trademark novel ideas, restricting their ingenuity. If they persist, they risk breaking rules without consequences. Copyright violation may result in a five-year prison sentence or a fine of 100 to 1,000 naira. Trademark infringement is not permitted, right-holders may fear the consequences if they bring criminal charges. Fortunately, the 2015 Cybercrimes Act of Nigera sanctions at $5 million or two years in jail. Nigeria, which has signed several international agreements, opposes their implementation due to her low ratification. Nigerian elections showed 28.57% international treaty ratification. The

[46] The Right to Research in Africa: Making African Copyright Whole, Desmond O. Oriakhogba, https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1080&context=research

enforcement of intellectual property rights in Nigeria is regrettably deficient, characterized by a notable lack of vigilance among individuals in safeguarding their proprietary interests and pursuing legal recourse against infringing parties. In accordance with the legal framework, requests are bestowed with legal entitlements subsequent to a thorough and meticulous evaluation process, thereby rendering litigation a relatively infrequent occurrence. In the case of Tv Xtra Production Ltd. v. National Universities Commission & Zain Nigeria, the esteemed Federal High Court rendered a momentous decision, affirming the act of copyright registration, in and of itself, confers the requisite qualifications for ownership.

Nigeria is a jurisdiction that also has challenges with the protection of free expression and intellectual property rights. The case of Musical Copyright Society of Nigeria (MCSN) v. Nigerian Copyright Commission (NCC) 2018, serves as a notable illustration of the inherent conflict between copyright protection and freedom of expression in Nigeria. In this particular instance, MCSN said that the steps undertaken by NCC, which included the suspension of its license and confiscation of its equipment, were a violation of its constitutional right to freedom of expression. The court ruled that while the enforcement of copyright is of utmost importance, it should not be pursued in a way that violates the right to freedom of speech. This ruling underscored the need of adopting a well-rounded strategy that upholds the principles of copyright protection while also safeguarding the fundamental right to freedom of expression. The Trade Marks Act of 1967, incorporated in Chapter 436 of the Laws of the Federation of Nigeria in 1990 the Trademark Act governs trademark litigation in Nigeria. The 1990 Trade Mark Regulations supplement this law. The following laws regulate trademark protection and enforcement in Nigeria. Except where the mark lacks artistic significance or actively deceives about the work's origin, free expression rights often trump trademark rights. The 1965 Trademarks Act protects trademarks in the jurisdiction. Trademark infringement in free speech is less common than in copyright, although it does occur, especially in criticism or parody.

In 2016, Fan Milk v. Olu Ode Okpe was a notable court case. In this case, blogger Olu Ode Okpe has published a critical examination of Fan Milk goods. After that, Fan Milk sued the person for trademark violation. They claimed that the article's use of their trademark hurt their brand. The court ruled that Okpe's use of the trademark was protected by the constitutional right to free speech as long as it did not cause consumer confusion or deceit[47]. The current legal case highlights the need to balance trademark rights with critical dialogue and personal

[47] Fan Milk v. Olu Ode Okpe SC.309/2006 (2016).
https://www.thelawlane.com/okpe-v-fan-milk-plc/

opinions. Current judicial interpretation of the Nigerian copyright provision limits copyright registration to 'moveable property', which cannot be stolen without appropriate remuneration. Copyright as property has been analyzed mostly in terms of its economic effects, overlooking its social effects, notably on the realization and fulfillment of other basic human rights. Section 39(1) of the Federal Republic of Nigeria's Constitution grants the right to access information as part of freedom of speech. The property clause in the Constitution of the Federal Republic of Nigeria (CFRN) may help shape the right to research when analyzing section 39(1) and equivalent clauses in other countries, such as South Africa. This is because interpreting the property clause this way emphasizes copyright's economic and social implications.

In contemporary times, Nigeria has witnessed an increasingly discerning acknowledgment of the imperative to achieve a harmonious equilibrium between the realm of intellectual property rights and the cherished principle of unfettered expression. Proposed revisions to the Copyright Act and Trademarks Act have been put forth with the aim of elucidating the parameters within which intellectual property rights may harmoniously coexist with the fundamental rights pertaining to freedom of expression. In the realm of intellectual property law, there have been ongoing deliberations surrounding the potential incorporation of fair use or fair dealing provisions within the Copyright Act. These provisions, if implemented, would grant individuals the ability to employ copyrighted works for purposes such as critical analysis, journalistic reporting, and educational endeavors, on the condition that such utilization is equitable and does not excessively impinge upon the entitlements of the rights holder[48]. As illustrated in chapter 2, Freedom of speech is the fundamental right to express one's thoughts, opinions, and ideas freely. However, this right can be restricted, especially when it overlaps with other intellectual property rights like copyright and trademarks. while copyright as we see protects the original expression of ideas in various formats, trademarks protect unique indications used to identify products and services. as analysed in the cases above, infringement accusations can arise when individuals or corporations use copyrighted content or trademarks without license, leading to conflicts. Legal system frameworks like copyright laws and trademark restrictions intendeds to balance intellectual property rights and freedom of speech. Similarly, courts consider factors like the nature of the work or trademark, the scope and purpose of the use to strike a balance. In the end, the goal is to foster creativity and innovation while ensuring right owners have legal means to protect their rights.

[48] Marius Scheider and Vanessa Ferguson, A guide to IPR enforcement on the African continent, *Journal of Intellectual Property Law & Practice*, Volume 16, Issue 8, August 2021, Page 894.

CHAPTER FOUR

RESOLVING CONFLICTS AND STRICKING EQUILIBRIUM

4.1. Conflict Between the Right to Property and the Freedom of Expression

Given the broad scope of the issue, freedom of expression may conflict with other constitutionally protected rights, such as intellectual property rights. In our modern world, electronic communication affects political, social, and economic relationships, prompting a comprehensive analysis of the delicate relationship between these fundamental rights.

It is an intricate balance between supporting creativity and creation on the one hand, and safeguarding the fundamental right to freely express ideas on the other. The relationship between intellectual property (IP) and freedom of expression is a complex one, that cannot be over emphasised including its numerous complexities. there is always a likelihood for conflict to emerges when the exercise of intellectual property rights impedes freedom of expression, as was analysed in the three chapters that were discussed. The use of particular content may be restricted, for instance, by copyright claims, and the use of particular names or symbols in expressive works may be restricted by trademark claims. Nonetheless, the exceptions to exclusive rights are made possible by legal concepts such as fair use (in copyright law) and paraody and satire. These doctrines permit the use of copyrighted content for purposes such as criticism, commentary, news reporting, education. While acknowledging the significance of freedom of expression, these exclusions are essential in order to strike a balance that respects the rights of those who hold intellectual property. There is a potential for a chilling effect on freedom of expression to occur when intellectual property rights are enforced in an excessively aggressive manner, such as by legal threats or lawsuits. Creators of content may choose to self-censor in order to avoid the possibility of facing legal consequences. The digital world, which has presented issues considering the ease with which digital content may be reproduced and distributed, should not be forgotten under any circumstances. In spite of this, as was discussed in chapter 2, it can also be leveraged as a tool to establish a balance in particularly complicated online areas where user-generated content is widespread. Since the court takes into consideration whether or not the transformative use of works adds a new significance or purpose to the original piece, it is more likely to be considered fair use and therefore protected under freedom of expression. The court takes both of these factors into consideration. When it comes to permitting parody and satire to be used for the purposes of humour, social criticism, and creative expression, legal systems often acknowledge the significance of this requirement. Due to this reason, the idea of the public domain is of the utmost important for the freedom of

expression. Once the rights to intellectual property have expired, the works become part of the public domain. This guarantees that an enormous quantity of information and creative works remain freely available for the public to use and express themselves. Regardless, when it comes to the competing rights, the issue that judges and legislators confront is having to strike a balance between the interests of intellectual property holders, who are entitled to protection for their creations, and the interests of the general public in supporting free expression, access to information, and the progress of knowledge. Depending on the cultures, legal systems, and social conventions of the various jurisdictions, the approach is different.

It is necessary to take a nuanced and situation-specific approach in order to properly address the complex relationship that exists between intellectual property and freedom of expression. In order to achieve a state of equilibrium, it is necessary to develop legal frameworks that acknowledge and safeguard intellectual property, while also ensuring that the fundamental right to freedom of expression is unaffected. Achieving this delicate equilibrium requires the utilisation of essential instruments including as fair use, transformative use doctrines, and judicious exceptions.

4.2 Stricking a Balance Between the Obstacles to Competing Rights

Harmonizing competing rights is difficult, in this chapter, I choose to explore the root obstacles to balancing both competing rights, from the huge impact of technology, to the economic, social and cultural perspective. These obstacles arise from technology's deep impact and economic, social, and cultural complexity. Copyright and trademark issues arise with social media and file sharing. DMCA helped new internet platforms and IP holders resolve infringement issues. Unfortunately, more IP holders are using this paradigm to censor and eliminate critical speech online rather than protecting their original works. Intellectual property and free speech impact our civilization in subtle ways. Malicious people upset this delicate balance. A thorough IP law analysis focuses on IP rights protection measures' consequences. Intellectual property laws unintentionally damage free expression and internet freedom. Recognizing that free speech and intellectual property rights conflict underlying every policy is crucial. Free speech and IP rights conflict when one invades the other this is why the law may restrict free speech while protecting authors. Using copyrighted material without permission under the pretense of free expression can undermine content providers and innovation. Unfortunately, there is no perfect answer to use to analyze departures beyond this

widely accepted assumption. This makes it hard to measure deviations. We can only guess how a hypothetical incentive structure would work. Until recently, European courts (even national courts) did not explicitly confront the conflict argument. It was also unimportant in the literary canon[54]. The causes of this issue are complex and require investigation. Professor P. Bernt Hugenholtz skillfully emphasizes the allure of natural rights, which contributes to the dicussion[55]. He also correctly highlights European property's constitutional recognition. According to intellectual property law, the statement should be repeated. Copyright and other intellectual property are examples of property, hence free speech is unlikely to be a problem. Lucie Guibault carefully investigated the conflict thesis from sixteen nations, eleven of which were European[56]. Guibault correctly noted that the current statutory limitations on exclusive rights are a delicate balance carefully crafted by legislators to encourage creative endeavors and the widespread dissemination of novel content. Safeguards for fundamental liberties, public welfare, and public domain items are crucial to equilibrium. Thus, these principles must not be repeated when interpreting statutory copyright limitations. The traditional balance between intellectual property rights (IP) and free speech is achieved by granting authors rights in their works and setting copyright boundaries. Two approaches differ: Jeffersonians oppose IP regulation because powerful actors can constrain speech and innovation, while the Hamiltonian position believes that IP law promotes expression and new ideas. The Council of Europe Parliamentary Assembly motion for a resolution in 2007 underlines the need to balance copyright and information availability in the digital age. Copyright does not limit speech, but rather protects expression, not content. Artists and other expressive artists use trademarks and merchandise for humor, cultural commentary, parody, and shock. National trademark laws protecting speech do not violate Paris Convention and TRIPS Agreement trademark obligations. TRIPS allows states to protect free speech in domestic trademark laws by excluding certain terms or other signs from the protectable subject matter, limiting trademark rights, implementing limited exceptions, and tailoring trademark dispute remedies to speech interests.

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[54] Towse, R. (2004, November). Niva Elkin-Koren and Neil Weinstock Netanel (eds.): 2002, The Commodification of Information, Kluwer Law International, The Hague, ISBN 9-041-19876-8. *Journal of Cultural Economics*, *28*(4), 320–323. https://doi.org/10.1007/s10824-004-5549-7

[55] Prof. P. Bernt Hugenholtz, Harmonizing European Copyright Law, vol.19, 2009, Institute for Information Law University of Amsterdam

[56] Lucie Guibault, Collective Management in the European Union, 2015 https://www.researchgate.net/publication/324685968_Collective_Management_in_the_European_Union

Technological innovations have made copyright law difficult to regulate work use, as they provide broad and easy access to information and could lead education, research, and culture. The digital revolution has called into question the delicate balance between both rights, requiring review and adaptation. Global IPR harmonization strengthened right-holder rights, adapted copyright prerogatives to the digital environment, and protected technical measures. To maintain balance, it is essential to identify and execute democracy's free speech and information exceptions and limits. Mandatory common management methods may be better than exclusive rights, which are hard to maintain and limit information availability. WIPO finds a correlation between neutral patent law and innovation 200 years after its founding. Investment in industrial applications and IT innovation are emphasized. IP human rights reconcile creators' rights with social goals. This approach promotes process exploration.

PART FIVE
CONCLUSIONS AND PROPOSALS

5.1.1 Conclusion

IPRs and freedom of expression are fundamental societal rights. Limiting speech requires stronger justification, and unauthorized use of works triggers legal action. A taxonomy is proposed to balance public interest in freedom of expression with the business of right-holders protecting their works. The conclusion outlines answers to the research questions:

1. **Does the struggle for relevance between the two rights leads to a conflict? Or is the conflict merely prima facie?**

In chapter 2. I further concur that the understanding of copyright use does actually conflict with freedom of expression. Examining this from a non-IPR perspective, such as a land property right. No one would make the claim that it might be necessary to violate a property right in order to enjoy freedom of expression. For example, Mr. B wishes to disagree with Mr. A. In doing so, Mr. B invades Mr. A's land and protests in his garden. Typically, it will be argued that violating Mr. A's property is unnecessary because other techniques can achieve the same expressive goal. On the question of the conflict as being prima facie, I concede that it is based on the assumption that the conflict only arises as a result of the demands of either rights being misinterpreted. Rights are defined based on the presence of conflict. Two approaches can be taken to define copyright: generic, which questions whether a creator should have copyright rights for their work, and a set-based view, which evaluates each right separately. This approach could be seen as a lesser collection of rights compatible with free expression. However, some views believe rights cannot conflict, such as the choice-based theory, which suggests rights are mutually consistent within a single system, and the interest-based view, which suggests conflict may appear but disappears when examined. Qualifying rights can prove they are not conflicting if there is a perception of conflict.

2. **How does the conflict between intellectual property protection and freedom of speech appear in the digital age?**

The digital age has made the conflict between intellectual property rights (IPRs) and freedom of speech more pronounced due to the ease of information dissemination. While IPRs protect right holders, digital reproduction and sharing enable widespread dissemination of content. However, this can sometimes conflict with freedom of speech principles, leading to censorship concerns and laws impringing on free speech. The determination of fair use in

digital content can be challenging, weighing intellectual property rights against freedom of expression and transformative works.

3. **What practical measures can be adopted to enhance a resolution of the conflict to strike a balance between competing rights (considering the legal frameworks, technology and societal perspectives)?**

The answer to this question is examined in detail in the next heading which consists of the recommendation. Nonetheless, a brief outline of the pratical measures include some copyright laws should be updated e.g the Berne Convention Treaty of 1886, is not designed for the digital age and its principles have been impacted by advancements of digital technologies promoting open licenses such as creative commons which let creators share their work with restrictions while still permitting different levels of usage. Create technological solutions, as technology can help balance copyright protection and free speech. Lastly, both the government and online platforms taking ressponsiblity to aid in balancing free expression and intellectual property.

Intellectual property (IP) is vital for innovation and the economy of a nation, encompassing forms like copyright, trademark, patent, trade secrets, and cultural heritage. The development of technology, driven by IP, has become a challenge for right-holders. Digitization has highlighted the need for global unification of IP rights. Internationalization and harmonization have been effective, with multinational trademarks like Coca-Cola, McDonald's, Microsoft, Nike, Adidas, and Disney demonstrating commercial significance. However, information and knowledge ownership are susceptible to political and economic processes. The prosperity of IP investments depends on a robust enforcement system, allowing intelligent entrepreneurs, finance, and politics professionals to acquire a full collection of IP assets, potentially generating royalties across worldwide jurisdictions.

5.1.2. Recommendations

To sum up this methodology introduction research paper, the digital age has transformed information dissemination and consumption, enabling unprecedented freedom of expression and knowledge. This change has also highlighted a delicate and complex clash between free speech and copyright protection. On one hand, the internet has allowed people to share their ideas and creations globally. On the other hand, copyright piracy and IP abuse are concerns. This subheading will outline the possible recommendations that will aid in the

attempt to strike a balance between the conflicting rights of freedom of expression and intellectual property protection. A conclusive result drawn from this research reveals that the contention between rights that are on an equal footing can be settled by weighing the potential downsides against the potential upsides. If both rights have a strong relationship to a value that is equally important, then weighing the potential risks against the potential benefits may be the most important factor in deciding which right should take precedence. The European Union has, in its attempt to promote innovation and the protection of intellectual property, enacted and adapted, regulations and directives as discussed in chapters 2 and 3. Although the EU has tried to create effective IPR laws, they are still flawed. Nonetheless, in order to achieve international success, the following recommendations are made:

1. Some copyright laws should be updated e.g., Berne Conventions to reflect the current digital technologies. The reason why I recommed an update in the copright law is that, for instance the Berne Convention (1886) in itself was not specifically designed for the digital age, although its princples have been reflected in some challanges presented by the advancement of digital technologies. Yet, copyright regulations still struggle to adapt to the fast-changing digital world. Digital rights management, fair use/fair dealing, and the balance between creator rights and innovation are still disputed at the national and international levels. Hence there is a need to expand fair use, exempting ‘transformative works‘, and addressing user-generated material issues. Comprehensive legislation and treaties should harmonize and sustain global standards and implementation methodologies across jurisdictions.
2. Promote open licenses such as creative commons, which let creators share their work with restrictions while still permitting different levels of usage. The recommendation to elevate intellectual property rights in Nigeria is to implement Creative Commons (CC) licenses, which allow free distribution of copyrighted works. These licenses are flexible, cost-effective, and easy to implement, balancing IP protection with free information. Monetary rewards encourage work production, which can help maintain cultural and intellectual activities. However, decreasing copyright advantages can reduce society's access to copyrighted content. The availability of copyrighted content may be affected by these factors. Facilitating global intellectual property principles through multilateral treaties and bilateral agreements can foster an environment conducive to knowledge industries, which are based on the ownership and regulation of ideas, information, and knowledge. Legal frameworks that enforce intellectual

property rights within specific industries can stimulate international investment and the dissemination of technologies across borders.

3. Create technological solutions, as technology can help balance copyright protection and free speech. This can be done through: a) content recognition by developing and using cutting-edge content recognition methods to detect and fix copyright breaches. These techniques may allow copyright holders to protect their works against false positives, which could stifle free expression. b). Blockchain technology because blockchain can create transparent, immutable copyright records. This helps content creators and users understand and respect copyright.
4. It is both the government and platform responsibility as national governments and online platforms aid in balancing free expression and intellectual property. First, by assigning effective mechanisms for reporting and addressing copyright infringement, maintain fairness for all parties involved. secondly, promoting self-regulation platforms that would promote responsible content sharing, transparency, and copyright compliance. Last but not least, governments can incentivize technological advances that safeguard copyright without constraining free speech. This boosts inventiveness.

Finding a balance between intellectual property protection and free expression in the digital era is tough and multifaceted. It requires simultaneous legal, technological, educational, and cooperative efforts. Finding a balance between these two ideals is crucial to creating a successful online ecosystem that respects content creators' intellectual property rights and allows free information exchange. With careful consideration, adaptability, and collaboration, the digital world can attain a peaceful equilibrium that benefits both creators and consumers.

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