

CRAFTING SUCCESS: MANAGING COMMERCIALISATION OF TRADITIONAL AND MODERN INTELLECTUAL PROPERTY

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Abstract

In the throes of our swiftly metamorphosing global economy, the commercialization of intellectual property (IP) emerges as an exquisite catalyst, igniting the flames of innovation, fires of competitiveness, and bestowing upon economic growth. This paper delves into the multifaceted realm of IP commercialization, exploring its significance, strategies, challenges, and implications. The entangled interplay between creativity and business is emphasised, highlighting the transformative power of IP assets in promoting technological advancement and redesigning industries. The paper describes various IP commercialization strategies, such as technology transfer, franchising, licencing, and joint ventures including the different facets of commercialization of IP in entertainment industries, movies, and advertisements. The paper also explores the aspect of commercialization of traditional knowledge, examining the rich historical significance of traditional knowledge systems in India and highlighting its ongoing relevance amidst contemporary commercial practices. By establishing alliances between creators, companies, and investors, these techniques make it easier for ethereal inventions to be transformed into tangible economic value. The significance of strategic planning, valuation, and legal frameworks is emphasised to successfully navigate the complex environment of IP deals. But there are obstacles amidst the possibilities. The paper evaluates the complexity of IP protection, enforcement, and the rise of digital landscapes that demand adaptable approaches to protecting IP rights. Ethical considerations are also examined, probing the balance between fostering innovation and ensuring equitable access to knowledge and resources. By examining real-world case studies and industry trends, the paper sheds light on the transformative impact of IP commercialization across sectors such as

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technology, healthcare, and entertainment. It underscores the role of IP in attracting investment, fueling entrepreneurship, and facilitating market entry, while also addressing concerns related to monopolies and market distortions. Ultimately, this paper unfurls a comprehensive overview of the dynamic landscape of IP commercialization, underscoring its integral role in shaping economies and societies. Through a nuanced analysis of strategies, challenges, and societal implications, it provides a foundation for understanding the ever-evolving relationship between innovation, commerce, and the valuable assets that comprise intellectual property.

Keywords: *Commercialization, transform, economy, technology, entertainment, knowledge, Intellectual Property, entrepreneurship*

Introduction

Intellectual property (IP) has emerged as a pillar of innovation, economic growth, and competitive advantage in today's fast-evolving global economy. The protection of the products of human ingenuity, and creativity and their potential for commercial success, depends on the strategic management of intellectual property assets. As enterprises traverse the intricate landscape of intellectual property (IP), they encounter a pivotal decision: Should they adhere to conventional modalities of IP commercialization, or should they embrace the innovative prospects presented by contemporary methodologies? The juxtaposition of traditional and modern IP commercialization strategies has evolved into a defining quandary for organizations spanning diverse industries. Conventional practices, entrenched in established norms and legal frameworks, have historically served as the foundation for safeguarding and monetizing intellectual property. These methods encompass patents, copyrights, trademarks, and trade secrets, establishing a framework wherein creators assert ownership over their intellectual assets. Nevertheless, in an epoch characterized by digitization, globalization, and rapid technological progression, traditional approaches are subject to heightened scrutiny.

Conversely, modern IP commercialization exploits emerging technologies, digital platforms, collaborative networks, and alternative licensing models to derive value from intellectual property. This approach acknowledges that the realm of IP transcends physical confines, extending into the vast and interconnected virtual domain. With the ascent of open-source movements, open innovation, and the sharing economy, modern IP commercialization unveils novel and agile opportunities for leveraging IP assets. The domain of entertainment, with its

perpetually evolving landscapes encompassing music, film, literature, and cultural expressions, occupies the crossroads of tradition and innovation. It serves as a realm where antiquity harmoniously coexists with the contemporary, and where the cultural tapestry of the past intermingles with the dynamic forces of the present. Within this dynamic and swiftly evolving industry, the commercialization of entertainment and the preservation of traditional knowledge have become intertwined challenges and opportunities, reshaping the modalities through which we create, consume, safeguard, and appreciate cultural treasures.

Intellectual Property As An Asset

Undoubtedly, our intellectual prowess constitutes an asset for society at large. In the contemporary world, characterized by a knowledge-driven economy, intellectual property (IP) has emerged as a cornerstone for individuals, businesses, and nations. Patents, copyrights, trademarks, and trade secrets are examples of intangible intellectual properties that go beyond simple legal frameworks to become powerful tools that foster economic value creation, innovation, and competitive advantage.

Creative creations, including software, films, books, and music, are protected by copyright laws. The work of authors, artists, and other content creators is shielded from unauthorised use and distribution by copyright rules. Licencing agreements are frequently used to commercialise copyrighted works, in which authors offer permission to others to utilise their work, distribute, or perform their works in return for payment or royalties. An effective illustration of the value of copyright as a tool for commercialization may be seen in the music and entertainment industry. For example: musicians and songwriters license their music to different commercials, movies and streaming services. This not only provides income but also expands the work in a wider sense by boosting its visibility and enhancing its marketability.¹

The fascination of brands and marks has rocketed among people in present times. These symbols, logos, or words that identify and distinguish products or services from others in the market called Trademarks, play a crucial role in brand recognition, quality assurance and building consumer trust. Businesses invest in creating and protecting trademarks to establish their unique brand identity. Eventually, these trademarks become assets that contribute to the

¹Understanding Copyright and Related Rights; Available at https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf (Visited on 5th September 2023)

commercialization of products and services.² For instance, the iconic Starbucks logo is a valuable trademark asset that instantly identifies the brand's coffee and other beverages. The widespread recognition and positive associations with the trademark contribute to Starbucks' commercial success. Companies can also license their trademarks for use in co-branded products or franchises, creating additional revenue streams.

Patent is another pillar as far as IP is concerned as it protects novel inventions and discoveries. Patent is a valuable asset for businesses and inventors, stimulating innovation as it provides an exclusive right to manufacture, sell, and use the patented invention for a period of 20 years. This exclusivity allows inventors to commercialize their inventions without immediate competition, providing a critical window to recoup research and development costs and generate profits. Consider the pharmaceutical industry, where extensive R&D investments are made to discover new drugs. Patents protect these innovations, allowing pharmaceutical companies to commercialize their medications, recoup investments, and contribute to the development of life-saving treatments. The IP asset represented by patents can also be monetized through licensing agreements, where other organizations pay royalties for the right to use the patented technology.

Similarly, Trade secrets encompass confidential or valuable business information and are often integral to the commercialization of products or services and they offer a distinct advantage over the competitors. Companies can license their trade secrets to strategic partners, suppliers, or distributors, contributing to the commercialization of products or services while maintaining control over their valuable information. A prime example is the formula for Coca-Cola, which has been considered a trade secret for over a century. The protection of this trade secret has been instrumental in Coca-Cola's global commercial success.³ Sometimes Enhancing Product Appeal through packaging is also important to create a different product identity. The unique visual design of a product or its packaging is referred to as 'Trade dress'. Design patents protect the ornamental design of a functional item. Both assets contribute significantly to the commercialization of products by enhancing their aesthetic appeal and distinguishing them from competitors' offerings. Be it the shape of Voss and Coca-cola bottles, the red sole of a

² Why trademarks fail to get registered and how to get successful registrations; Available at <https://economictimes.indiatimes.com/news/how-to/why-trademarks-fail-to-get-registered-and-how-to-get-successful-registrations/articleshow/103060892.cms?from=mdr> (Visited on 5th September 2023)

³ Patent v/s trade secret: detailed study on coca- cola brand; Available at <https://www.aequivic.in/post/patent-vs-trade-secret-detailed-study-on-coca-cola-brand> (Visited on 6th September 2023)

Christian Louboutin shoe, the red tab on Levi's jeans and the packaging of Ferrero rocher, the trade dress of all of these products are the driving force behind the popularity and success of these brands.

Hence, IP assets are increasingly recognized as valuable assets on an organization's or company's balance sheet. Accurate valuation of these assets is essential for financial reporting, as it impacts a company's overall valuation and attractiveness to investors and creditors. Recognizing the value of IP assets ensures that they are properly accounted for and are amalgamated into financial strategies.

Strategies for Managing IP

Franchising: Franchising functions as a strategic modality for the efficient administration of intellectual property (IP), wherein designated individuals or entities, referred to as franchisees, are authorized by the franchisor to conduct enterprises utilizing the established brand, business model, and intellectual property assets. This arrangement is typically structured with fees and ongoing royalties as compensation. The fundamental essence of franchising lies in its ability to harness IP for the mutual benefit of both parties involved. Franchising facilitates the expansion of an IP owner's brand presence into new markets and regions by leveraging the recognized brand identity, thereby expediting market entry and recognition. Central to franchise agreements are standardized operational procedures meticulously designed to ensure uniform product or service quality across all franchise locations, thus preserving and enhancing the brand's reputation and integrity. One of the significant advantages of franchising is its capacity to generate a consistent revenue stream for IP owners. The main sources of sustenance for this channel are primarily derived from franchise fees, royalties, and assorted payments originating from franchisees. Importantly, franchising serves as a mechanism for distributing financial risks, with franchisees often assuming a significant portion of the operational and financial responsibilities. This risk-sharing approach reduces the financial burden on the franchisor, granting them the freedom to focus on core IP development and innovation. In essence, franchising not only leverages IP for market expansion but also ensures financial stability and brand consistency through standardized operations.

Licensing:

Licensing stands as a strategic approach to the management of intellectual property (IP), wherein IP owners extend the privilege to others, known as licensees, to utilize their IP assets in exchange for compensation, typically in the form of royalties or fees. This method presents

a mutually advantageous arrangement.⁴ IP owners can generate revenue without engaging directly in the commercialization of their IP, while licensees gain entry to valuable IP resources that might otherwise be inaccessible. Licensing can result in market expansion, shared risk mitigation, and the broadening of brand reach. Furthermore, it empowers IP owners to concentrate on their core activities and harness the expertise of their partners. Licensees, in turn, can leverage specialized IP, reduce their time-to-market, and tailor their offerings to cater to local market nuances. Therefore, careful negotiation and robust licensing agreements are essential to ensure the mutual success of licensors and licensees and to protect the integrity of the licensed IP.

Joint ventures:

Joint ventures (JVs) are strategic partnerships or a collaborative approach in which two or more entities collaborate to pursue a specific project, opportunity, or business venture, often involving the sharing of intellectual property (IP). This approach to IP management offers several advantages in fostering commercialisation. Joint Ventures allow organizations to pool their resources, including IP assets, to tackle projects that may be too large or costly to undertake individually. Moreover, the risk and financial burdens are shared among joint venture partners, reducing the exposure of any single entity. This can be particularly valuable in ventures with high uncertainty or capital requirements. One of the most beneficial points of this concept is that partners with diverse expertise and IP portfolios come together, enabling the combination of complementary technologies, products, or services. It accelerates innovation and fuels market access and IP licensing. However, successful IP management in JVs requires clear agreements on IP ownership, usage, and protection, as well as mechanisms for dispute resolution.

Tech transfer:

Technology transfer, as a strategic approach within the realm of intellectual property (IP) management, plays a central role in facilitating the seamless transition of innovations and IP assets from research institutions or corporations to entities equipped for commercialization. This strategy acts as a conduit for converting cutting-edge research and groundbreaking technologies into practical, marketable products and applications.⁵ Through the mechanism of

⁴ IP Assignment and Licensing; Available at <https://www.wipo.int/sme/en/assignment-licensing.html> (Visited on 6th September 2023)

⁵ Intellectual Property and Technology Transfer; Available at <https://www.wipo.int/technology-transfer/en/> (Visited on 8th September 2023)

technology transfer, IP proprietors unlock the potential of collaboration by harnessing the specialized knowledge and resources offered by partner organizations. This collaborative synergy expedites the journey from conceptualization to market deployment and, significantly, disperses financial risks through shared investments. For IP owners, technology transfer represents an avenue to monetize their intellectual assets, often through the establishment of licensing agreements that yield royalties or alternative forms of compensation. Concurrently, recipients of technology transfers gain access to valuable expertise and innovative concepts, thereby shortening their time-to-market and bolstering their competitive edge. The successful execution of technology transfers pivots on the formulation of meticulously defined agreements that delineate IP ownership, usage rights, revenue-sharing models, and, critically, the alignment of objectives between collaborating partners. Ultimately, technology transfer operates as a catalyst for economic development, propelling innovation, fostering job creation, and nurturing collaborative environments that pave the way for further advancements and enhancements in the realm of intellectual property.⁶

Exploring The Intersection: Commercialization of Traditional Knowledge As Intellectual Property And The Dynamics Of Benefit Sharing

From the timeless allure of Dassehri and Ratnagiri mangoes to the persistence of Ayurveda in the healthcare realm, traditional knowledge stays vibrant due to consistent use and patronage. In weaving, painting, music, and dance, commercial interest keeps art forms alive, but equitable returns to communities remain a vital question. Icons like Michael Jackson and AR Rehman owe their greatness to indigenous music, prompting reflection on the fairness of benefit sharing. This presentation unfurls the essence of traditional knowledge, explores avenues for commercialization, underscores its significance, and charts a path towards sustainable and equitable benefit-sharing mechanisms.

To prevent misappropriation and promote a benefit-sharing model, the United Nations (UN) Convention on Biological Diversity (CBD) in 1993 recognised the significance of preserving traditional knowledge about genetic resources owned by indigenous people. Article 8(j) of the CBD, stressed the necessity for consultation with and remuneration to the traditional owners whenever such knowledge was utilized. Following its adoption by CBD members in 2010, the Nagoya Protocol on the ABS Model was subsequently put into effect. Emphasizing the rights of native communities to self-recognition and sovereignty over internal affairs, the 2007

⁶ What is technology transfer?; Available at <https://www.twi-global.com/technical-knowledge/faqs/what-is-technology-transfer> (Visited on 10th September 2023)

Declaration on the Rights of Indigenous Peoples (UNDRIP) underscores these principles in Articles 3 and 4. ABS recognizes the entitlements of resource providers, including governments, private landowners, and communities, allowing them to authorize access to these resources and receive a fair portion of the benefits derived from their utilization. Furthermore, it respects their entitlement to preserve, manage, and develop their traditional knowledge, cultural legacy, and artistic expression (as stated in Article 31 of UNDRIP; Dutfield and Suthersanen, 2019). However, efforts to protect traditional knowledge beyond the UN framework, particularly within the World Trade Organization's 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), have encountered restricted success.⁷

The ABS mechanism operates on two core principles:

1. **Prior Informed Consent (PIC):** Before a user can access genetic resources, they must first receive permission from the relevant national authorities of the country that provides the resources. This procedure adheres to a strong institutional and legal structure at the national level.
2. **Mutually Agreed Terms (MAT):** MAT refers to the agreement between parties providing genetic resources and those utilizing them. This agreement outlines the terms governing access, usage, and the sharing of benefits.

These principles are also outlined in Article 15 of the Convention on Biological Diversity, established in 1992. The CBD establishes international standards for genetic resource access and guarantees the just and equal distribution of benefits arising from their use.

In a robust ABS mechanism, distinct roles are assigned to various stakeholders to ensure the equitable and sustainable utilization of genetic resources.

- **Providers of Genetic Resources**, typically represented by States, exercise sovereign rights over natural resources and establish conditions, including PIC and MAT, to grant access to these resources. This negotiation may also involve the natives or local communities to respect their rights and traditional knowledge.
- **Users of Genetic Resources**, including botanical gardens, industrial researchers, collectors, and research institutes, seek access for diverse purposes, bound by international agreements and national regulations to share benefits with providers.

⁷ Balancing community rights and national interests in international protection of traditional knowledge: a study of India's Traditional Knowledge Digital Library; Available at <https://www.tandfonline.com/doi/full/10.1080/01436597.2021.2019009> (Visited on 10th September 2023)

- National Focal Points act as crucial links, facilitating transparent processes.
- Competent National Authorities (CNAs) are responsible for granting access and representing provider interests.

In this comprehensive ABS mechanism, these stakeholders collaborate to uphold fairness, transparency, and sustainability, ensuring that access respects ILC rights, benefits are distributed equitably, and the entire process aligns with international agreements and national regulations. Their collective efforts are integral to achieving a balanced and equitable approach to genetic resource utilization.⁸

Traditional knowledge resides in texts and minds of the people integral to indigenous and local lifestyles which is passed down from one generation to the other. It encompasses skills, innovation, and practices and is sometimes untapped in remote areas. A simple example is the Farmers' wisdom on seeds, farming, water and pest management. The concept of traditional knowledge is intrinsically connected to 'Lok Parampara'. According to the All India Coordinated Research Projects insights, tribal healers are the backbone of 80% of Indian healthcare. They know 9000 plant species out of which 7500 plant species can be used for healing. Hence, the commercialisation of traditional knowledge involves the commercialisation of practices from cooking secrets to antiseptic traditions like turmeric infusion. It can also include knowledge extracted from ancient texts like Sushruta Samhita on medicine and surgery.⁹ It can never be ignored that modern medical technology and techniques have their roots in these traditional texts. Adding on to this commercialisation also involves goods crafted by practitioners and industries or any particular community through a unique production process. For example, the recipe of Odisha and Bengal Rasagola, growing to Darjeeling tea or making of sambalpuri clothes.

Commercialization of Traditional knowledge is essential to extend the benefits of the age-long traditional solutions to the wider society and secure a stance in the international arena. It accelerates the transformation of knowledge from tacit to explicit form. For effective commercialisation two important strategies had to be taken care of such as:

⁸ Introduction to access and benefit-sharing; Available at <https://www.cbd.int/abs/infokit/all-files-en.pdf>; (Visited on 10th September 2023)

⁹ Loukas M, Lanteri A, Ferraiola J, Tubbs RS, Maharaja G, Shoja MM, Yadav A, Rao VC. Anatomy in ancient India: a focus on the Susruta Samhita. *J Anat.* 2010 Dec;217(6):646-50. doi: 10.1111/j.1469-7580.2010.01294.x. Epub 2010 Sep 30. PMID: 20887391; PMCID: PMC3039177.

1. Standardization and quality control: There needs to be standardized formulations for better quality and shelf life by ensuring the quality of the components used. For example, herbs and medicines. The presentation, durability and value of the product can be enhanced through sleek packaging.¹⁰
2. Innovative Product Development: Product development out of the traditional knowledge should be done only after analysing the traditional products' relevance in contemporary concerns. The rise of organic products has rocketed in the last few years. Therefore, promoting natural substitutes of chemical products or blending indigenous skills with modern design i.e., 'utility meets aesthetics' can be another important strategy for the commercialisation of traditional knowledge.

India achieved a ground-breaking feat by initiating equitable benefit sharing through a momentous partnership. The Tropic Botanic Garden and Research Institute (TBGRI) joined forces with the Kani tribal community in Kerela, leading the charge in providing fair returns for traditional knowledge holders and innovators.¹¹ India's TBGRI-Kani initiative stands as a testament to innovation. Due to the lack of a legal framework for benefit-sharing, the Kerela Kani Samudaya Kshema Trust emerged to channel benefits. This audacious step not only preserves tradition but paves a pioneering path where collaboration and progress harmonize seamlessly. The remarkable narrative of the Kani tribe's ABS model unfolded in April 1987. A dedicated expedition led by the Chief Coordinator of the All India Coordinated Research Project on Ethnobiology ventured into the forest, accompanied by Kani guides. Within days, a fascinating discovery emerged: The Kanis remained remarkably energetic while the scientists grew fatigued. Further investigation unveiled that the vitality stemmed from fruits they consumed, initiating the journey to harness this wisdom. Initially, the tribal community hesitated to disclose details about the plant, but eventually, they revealed it as "Arogyappacha" – the source of everlasting health. Researchers extracted samples for study at the Regional Research Laboratory at Jammu. Further investigation stated that the fruit contains non-steroidal polysaccharides and glycolipids that have anti-fatigue and immune-boosting qualities. This led to the creation of 'Jeevani', a product ready for market by 1994. The patent rested with the 'Regional Research Laboratory' and the 'Tropical Botanic Garden' and 'Research Institute'.

¹⁰ Balekundri, A., Mannur, V. Quality control of the traditional herbs and herbal products: a review. *Futur J Pharm Sci* 6, 67 (2020), Available at <https://doi.org/10.1186/s43094-020-00091-5> (Visited on 11th September 2023 at 8:45pm)

¹¹ <https://www.wipo.int/ipadvantage/en/details.jsp?id=2599> (Visited on 11th September 2023 at 8:55 pm)

The 'Arya Vaidya Pharmacy' was selected for Jeevani tablet production. As questions arose about benefit sharing, the 'Kerala Kani Samudaya Kshema Trust' convened meetings to solidify the ABS agreement, securing the Kani tribe's rightful involvement in the success story. The first agreement took place in 1996 where it was decided that a 2% royalty to be paid to the tribal people for 10 years and then the second agreement took place in 2006, where it was decided that a 4% royalty would be given to the tribal people for 10 years.¹²

Beyond the narrative of the Kani Tribe, there exist additional instances that eloquently exemplify the efficacy of a successful benefit-sharing mechanism. Noteworthy among these is PepsiCo's negotiation of an Access Benefit Sharing Agreement with a fishing community deeply rooted in Tamil Nadu, India. This agreement pertains to their traditionally cultivated and harvested seaweed, specifically the 2000 MT seaweed exported to Malaysia, the Philippines, and Indonesia. Under the terms of the agreement, a royalty equivalent to 5% of FoB (Free on Board) was remitted, amounting to Rs. 3.9 million. Another consequential illustration involves the ABS Agreement established between the San people and the CSIR for the utilization of active compounds derived from the Hoodia plant. This agreement outlined particular financial and non-financial advantages, encompassing provisions for the development, education, and vocational training of the San Community.¹³

Commercialisation In the Entertainment Industry As An IP

The entertainment industry employs a multifaceted intellectual property (IP) strategy for commercialization, leveraging copyright, trademark, and patent laws to protect and monetize creative works, brands, and innovations. The entertainment industry is all about creativity and different styles of presentation. Copyright law is fundamental in the entertainment industry for safeguarding creative works such as movies, music, books, and artwork. The automatic protection upon creation ensures that original content is shielded from unauthorized copying or distribution. Copyright owners can monetize their works through licensing agreements, allowing others to use their content in exchange for fees or royalties. This strategy enables broader distribution and revenue generation while retaining control over the original work. Trademarks are omnipresent when it comes to companies, business and marketing and therefore, are indispensable for building and protecting brand identity in the entertainment

¹² SHARING WITH THE KANISA case study from Kerala, India, available at <https://www.cbd.int/financial/bensharing/india-kanis.pdf> (Visited on 11th September 2023)

¹³Leveraging Economic Growth through Benefit Sharing; Available at <https://www.wipo.int/ipadvantage/en/details.jsp?id=2594> (Visited on 11th September 2023)

industry. Recognizable symbols, names, and slogans distinguish products and services, fostering consumer recognition and loyalty. In the entertainment industry, the intellectual property (IP) strategy encompasses patent protection for technological innovations, granting exclusive rights to creators to monetize their inventions and stimulate further innovation. Enforcement of IP rights is essential to address unauthorized use and legal actions for damages, while licensing agreements strategically expand distribution and revenue streams. Industry professionals often seek legal counsel to navigate complex agreements and ensure rights are upheld. Overall, the entertainment sector relies on copyright, trademark, and patent laws to safeguard creative works, enhance branding, and foster technological advancements, driving economic growth through licensing, distribution, and merchandising opportunities. A thorough understanding of these IP laws and the involvement of legal experts are vital for success in this dynamic industry.

In the case of *Star India v. Piyush Agarwal* (2013)¹⁴, the central commercialization issue revolved around the dissemination of live cricket game information, specifically score updates and game alerts every minute, without a certificate of authorization. Star India, holding the television broadcasting license from the Cricket Control Council of India (BCCI), sought to protect its investment in broadcasting by preventing the defendant from reporting on cricket matches through a mobile app. Initially, the Delhi High Court issued a limited injunction, allowing the defendant to delay their reporting by 15 minutes from the actual broadcast, effectively giving preference to the official broadcaster's commercial interests. Subsequently, this ruling was reversed by the Appeals Chamber of the Delhi High Court, determining that the information and updates in contention were fundamental facts and lacked protection under copyright law. Consequently, the act of posting or sharing competitive information or facts, irrespective of the purpose was deemed not to qualify as unfair competition, unfair enrichment, or breach of copyright laws. The case highlights the complex intersection of intellectual property and commercialization in the digital age, especially in the context of live sports broadcasting. While official broadcasters like Star India invest substantial resources in securing broadcasting rights, technology enables individuals to disseminate factual game information in real time. The case raises questions about the extent to which such information can be protected or restricted for commercial purposes and whether it constitutes unfair competition. Ultimately, the Supreme Court's decision suggests that the issue remains unresolved, emphasizing the need

¹⁴ *Star India v. Piyush Agarwal*, 2013 (54) PTC 222 (Del)

for clarity in legal frameworks regarding the commercialization of live sports data and its potential impact on broadcasters' investments.

Big entertainment industries or production houses such as Red Chillies, Yashraj Films, Zee Films, Dharma Productions etc., make huge amounts of money because of their IP management strategy. Commercialization of intellectual property (IP) within the entertainment industry, as exemplified by film studios, is a multifaceted strategy.¹⁵ Production houses heavily invest in the development and acquisition of IP, encompassing scripts, characters, and trademarks. Collaborations with other IP owners may also occur, adapting existing works into films. This initial creation process requires a clear vision, a strong creative team, and a solid legal foundation. Apart from this Protecting IP rights is paramount. Studios register copyrights, patents, and trademarks in relevant jurisdictions and actively enforce them against unauthorized use. Monitoring for potential IP violations, both in the market and online, is essential. Safeguarding against internal threats, such as leaks or theft, is achieved through robust security measures and confidentiality agreements. Production houses seek to maximize the value and profitability of their IP through various avenues. This includes film production, distribution, licensing to broadcasters and streaming platforms, merchandising, and exploring opportunities in new markets or media formats. A loyal fan base and a well-defined business strategy are instrumental in monetizing IP. In response to the dynamic and competitive nature of the film industry, studio continually innovate their IP portfolio.¹⁶ They ensure to strike a balance between creating original content and leveraging existing popular IP. Embracing emerging technologies and trends, such as digital transformation, social media, and artificial intelligence, enhances IP creation, protection, and monetization. Be it registering the 'todoong' intro sound or patenting the 'skip intro' feature, Netflix has tremendously gained a competitive edge in the streaming market with all these brilliant marketing tactics which fuel the monetary gain of the company.¹⁷

Similarly, collaborations and strategic alliances with other studios or partnerships with other production houses or IP owners to expand their IP's reach and diversity. The iconic alliance between Disney and Pixar showcases how collaboration can result in blockbuster films and

¹⁵ In Bollywood, this is an era of corporate production houses; Available at <https://www.deccanherald.com/india/in-bollywood-this-is-an-era-of-corporate-production-houses-893559.html> (Visited on 29th September 2023)

¹⁶ From Script to Screen: What Role of Intellectual Property? Available at https://www.wipo.int/pressroom/en/stories/ip_and_film.html (Visited on 13th September 2023)

¹⁷ 5 years of 'Skip Intro' button: Netflix reveals why it was added in the first place; Available at <https://indianexpress.com/article/technology/tech-news-technology/netflix-skip-intro-button-five-years-most-popular-7824499/> (Visited on 29th September 2023)

profitable IP commercialization. Disney's access to Pixar's animation technology enriched its content library, leading to the creation of beloved characters and captivating stories. The partnership leveraged Disney's marketing and distribution prowess, ensuring the widespread commercial success of Pixar's creations.¹⁸ Spotify's strategic alliances with key podcasting players illustrate how partnerships can transform a company into a dominant platform. By aligning with podcasting giants like Joe Rogan and Gimlet Media, Spotify expanded its content offerings, attracting a broader user base seeking diverse audio experiences. This collaboration allowed Spotify to monetize its IP in the form of exclusive podcasts while enhancing its market position.¹⁹ The incorporation of Spider-Man into the Marvel Cinematic Universe demonstrates how strategic alliances can breathe new life into existing IP. This collaboration revitalized Sony's Spider-Verse and seamlessly integrated Spider-Man into the larger MCU narrative, resulting in record-breaking box office successes. The strategic partnership expanded the reach and profitability of Spider-Man IP. Netflix's collaborations with various production studios exemplify how partnerships sustain a steady flow of original content, facilitating IP commercialization. Working with studios like Warner Bros., Universal Pictures, and Paramount, Netflix diversified its content catalogue to cater to diverse audience preferences.²⁰ These alliances ensured a continuous stream of entertainment and solidified Netflix's position as a go-to source for content.

Hence, strategic alliances in the entertainment industry are instrumental in IP commercialization and ensure benefit sharing. They enable companies to access technology, marketing expertise, distribution networks, and content diversity that may not have been achievable independently. These partnerships result in the successful monetization of IP assets, reaching broader audiences, and maintaining a competitive edge in the dynamic entertainment landscape.

Commercialization Of Modern And Traditional Intellectual Property: A Comparative Analysis

The commercialization of intellectual property (IP) differs significantly between traditional knowledge and the modern entertainment industry due to the distinct nature of the assets, their

¹⁸Disney Pixar Merger Case Study; Available at <https://www.studysmarter.co.uk/explanations/business-studies/business-case-studies/disney-pixar-merger-case-study/> (Visited on 29th September 2023)

¹⁹ <https://www.nytimes.com/2022/02/17/arts/music/spotify-joe-rogan-misinformation.html> (Visited on 29th September 2023)

²⁰ Hans J. Brunk 'How Netflix Used Partnerships and Alliances to Internationalize and Then Internalize the Global Streaming Industry' October 3rd, 2020

historical context, and evolving business models. To explore the contrasting strategies in the commercialization of these two forms of IP, a few hotspot areas are:

- Traditional knowledge, often rooted in centuries-old practices and wisdom of indigenous cultures, is typically communal and passed down orally. It encompasses skills, agricultural practices, and cultural expressions. Whereas, the modern entertainment industry deals with contemporary, copyrightable creations, such as music, films, video games, and digital content. These are often individual or corporate creations protected by copyright.
- Ownership of traditional knowledge is collective, belonging to indigenous communities or societies. Control is often decentralized, with custodians within the community whereas, ownership of IP in the entertainment industry is individual or corporate. Rights and controls are well-defined, and often owned by creators, studios, or production companies.
- Traditional knowledge is often devoid of formal intellectual property (IP) rights protection, leaving it vulnerable to misappropriation and exploitation. In contrast, copyrights, trademarks, and patents serve as protective measures for intellectual property in the entertainment industry, establishing legal frameworks that enable control and commercialization.
- Commercialization of traditional knowledge often involves collaborative partnerships with indigenous communities and external entities. Revenue-sharing, benefit-sharing, and ethical agreements whereas, commercialization strategies in the entertainment industry include licensing, distribution deals, merchandising, and digital streaming platforms. These involve well-defined contracts, royalties, and global distribution networks.
- Traditional knowledge commercialization has been limited by a lack of access to markets and technology, but advances in communication enable wider dissemination whereas, technological advancements have revolutionized the entertainment industry, creating new revenue streams through digital platforms, streaming services, and online sales.
- Commercialization of traditional knowledge must respect cultural heritage, protect traditional rights, and ensure equitable benefits for indigenous communities. Ethical agreements are crucial. While in the modern entertainment industry ethical

considerations do apply but the primary focus is often on contractual negotiations, market competition, and profit generation.

- Protecting traditional knowledge through legal means remains a challenge. International agreements like the Nagoya Protocol aim to address this issue but, IP protection is well-established, with legal mechanisms for enforcement and recourse in case of infringement.
- Adaptability and Innovation: Commercialization of traditional knowledge often focuses on preservation and sustainable practices, with adaptations to modern markets. But, the entertainment industry is dynamic. It constantly adapts to emerging technologies and consumer trends, fostering innovation in content creation and distribution.
- Traditional knowledge faces challenges in reaching global markets due to cultural, linguistic, and logistical barriers whereas, the entertainment industry has a global reach through digital platforms, making it easier to access international audiences.

Conclusion

Hence, in a nutshell, the commercialization of traditional knowledge and IP in the modern entertainment industry follows distinct paths due to differences in ownership, protection, technology, and cultural considerations. While the commercialization of traditional knowledge is evolving with increased awareness of ethical issues, the entertainment industry continues to thrive through well-established IP rights and global distribution networks. Recognizing these differences is essential for implementing effective and responsible commercialization strategies in each context. The entertainment industry hinges on the intricate framework of licensing agreements, emphasizing the importance of protecting both parties' rights and ensuring precise terms of use. Consulting with experienced IP attorneys or industry professionals well-versed in entertainment licensing is strongly recommended for effective navigation of these agreements. Entertainment, in its myriad forms, has always been a bridge to our shared human experiences, reflecting our values, beliefs, and aspirations. From ancient oral traditions and folk music to the blockbuster movies and streaming platforms of today, entertainment has the power to captivate, educate, and inspire. At the heart of this creative endeavour lies traditional knowledge — the wisdom passed down through generations, the cultural nuances that define societies, and the heritage that enriches our global mosaics. Nonetheless, the nexus of entertainment and traditional knowledge presents difficult problems in a time of globalisation, digitalization, and the expansion of intellectual property rights. Hence, delving into the dynamic interplay between traditional and modern IP

commercialization strategies to understand the advantages, challenges, and potential synergies that arise from both approaches is the need of the hour.

Recommendations For Successful Commercialization

- Providing training programs for individuals collecting materials from the wild and emphasizing sustainable harvesting techniques to ensure that collected plant parts do not harm the viability of the plant is important. Focus on methods that allow the plant to continue growing, especially for non-root parts like leaves, fruits, flowers, bark, gums, and resins.
- Providing local communities with the skills for first and second-degree processing by their traditional knowledge. Training should include cleaning, sorting, drying (sun or shade), cutting, and powdering of collected plant materials. These simple procedures can significantly enhance the value of the products and increase the income generated from the same volume of collection.
- Implementation of policy that encourages large-scale commercial use, including domestic consumption and exports, to rely solely on cultivated sources rather than natural collections. This will promote sustainable sourcing and reduce the pressure on wild populations.
- Potential partnerships with non-governmental organizations (NGOs), universities, and research institutes can be forged to create agro-technology packages for commercially significant medicinal plants. It is crucial to motivate the industry to actively invest in these development initiatives, given that they stand as the primary beneficiaries.
- Implementing monitoring programs to gauge the well-being of natural populations and ecosystems is essential. Periodic assessments of the status of commonly utilized species should be conducted to prevent excessive harvesting and secure long-term sustainability. Involving State and National Biodiversity Boards, Panchayati Raj institutions, NGOs, and students in these monitoring endeavours is recommended.
- In case there is a portrayal of traditional knowledge or an outcome of it on TV or any streaming platform, involving the indigenous people in it can further lead to authenticity and foster better commercialisation.
- It is vital to ensure that Intellectual Property Rights (IPR) policies related to benefit-sharing mechanisms and legal protection are transparent, equitable, and sustainable.

This will safeguard the interests of the natives and encourage fair sharing of benefits derived from medicinal and aromatic plants.

- Collaborating with law enforcement agencies, industry associations, and technology companies to develop and implement anti-piracy measures. Educating consumers about the risks associated with consuming pirated content and promoting legal alternatives.
- The proper legal framework should be for various facets of IP management in entertainment industries such as live streaming etc.
- Creating awareness programmes on IP and cyberpiracy in the entertainment industry.