



Adjudication of copyright disputes under trips

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Abstract

World Trade Organization is an international institution which was established with the purpose of providing common platform to nation members for the open trade of goods, services and intellectual property rights. There are many trade agreements had been enacted in it and Trade Related Aspects of Intellectual Property Rights (TRIPS) is the one of the agreement of WTO dealing with the protection and enforcement of intellectual property rights even the dispute settlement body is also there to help the nations to resolve their disputes through peaceful manner like consultation even the panel and appellat bodies are there to resolve the disputes among members and it is obligation on nation members to obey the decision of appellat board.

Keywords: world trade organization, open trade, intellectual property rights (TRIPS)

Introduction

During the past 50 years the world has undergone a great transformation. On account of Industrial Revolution and the subsequent changes new forms of property have come into existence. Digital technology and new communication systems have made dramatic change in our lives. Business community as well as individuals are increasingly using computer to create, transmit and store information in the electronic form instead of traditional paper documents. The Intellectual Property is the result of the human intelligence. It has come to play a very vital role in the lives of human beings. The Law of copyrights, patent rights, trade mark rights, publicity rights, moral rights and rights against unfair competition comes within the category of Intellectual Property Rights (IPRs). The importance of these rights was realized after second world war. Due to the importance of these rights the industrially and scientifically developed countries took steps for the protection of these rights by way of international cooperation. Consequently, various International Conventions, Treaties and Agreements were adopted.

Meaning of Copyright

Copyright is one of the categories of IPRs. The root of the IPRs lies in the Berne Convention, 1971^[1]. The whole idea of IPRs is comprehended in the following multilateral Conventions^[2].

1. Rome Convention, 1961
2. Paris Convention, 1971
3. Berne Convention, 1971
4. Treaty of Intellectual Property in respect of Integrated Circuits, 1989.
5. Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), 1994.

The Berne Convention, 1971 provides that Copyright, which is a property right owned by the author, include the right of translation^[3], the right of reproduction^[4], the rights of performance and communication^[5], the right of broadcasting or transmitting^[6], the right of public recitation^[7], the right of

adaptation and arrangement^[8] and the rights of cinematographic adaptation, reproduction, distribution, public performance and public communication^[9]. The protection of the author right is very essential, if Copyright not exists, then pirate would take away the incentive for creative work and authors would be reluctant to spend their time and energy in doing works that do not bring material rewards. If right holders are secured in their ability to sell and license their property over the internet, they will exploit this market fully and make more valuable works available through this medium. The TRIPS Agreement provides for the protection of such works including computer programs, cinematographic works and records.

Trips under WTO

Berne Convention, 1971 and many other International Conventions were there for the protection of Intellectual Property Rights. But all these Conventions lacked sufficient enforcement mechanism and dispute resolution procedure. The World Trade Organization (WTO) Agreement embodying the results of the Uruguay Round contains the TRIPS Agreement^[10] in Annex IC. The Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement is part and parcel of WTO. The TRIPS Agreement automatically binds members of WTO. TRIPS Agreement adopted some rules of Berne and Paris Conventions, it is the most significant milestone in the development of Intellectual Property Rights. All the members of WTO are bound by the TRIPS Agreement. The object underlying the TRIPS Agreement therefore is to provide worldwide protection to the IPRs and Copyright on the basis of equality.

General Provisions and Basic Principles of TRIPS

The TRIPS Agreement, intending to reduce impediments to international trade and promote adequate protection of IPRs, emphasises the need for proper enforcement of IPRs and provides effective and expeditious procedures for the multilateral settlement of disputes between the governments.

Part 1 of the TRIPS Agreement enumerates general provisions and basic principles, especially the obligation to provide "national treatment" ^[11]. Accordingly each country shall accord to the nationals of other countries treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property. The most noteworthy clause is the provision of "most favoured nation treatment" ^[12], a novelty in the history of international intellectual property rights treaties. Under this provision any advantage or favour granted by a country to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other countries. The objective of this Agreement is to promote technological innovation ^[13] and international transfer of technology. To achieve this objective, the TRIPS Agreement provides a number of standards of protection for IPRs and Copyright.

Copyright Under Trips

Regarding Copyright, the TRIPS Agreement stipulates that parties should comply with the substantive provisions of Berne Convention, 1971 ^[14], however they are not obliged to protect the moral rights as provided in the Convention ^[15]. Copyright protection is extended to expressions such as a literary or artistic work and not to ideas, procedures, methods of operation or mathematical formulae. Computer programs would be getting protection like literary works under the Berne Convention ^[16]. It also lays down the conditions under which compilations of data should be protected by copyright. The Agreement also provides for rental rights under which the title holders of computer programs and cinematographic works are eligible to authorise or prohibit the commercial rental of their works to the public ^[17]. Provisions are there to protect performers from unauthorised recording and broadcasting of live performance as well. The term of protection for performers and producers of phonograms is 50 years ^[18]. The Agreement also provides for "criminal procedures and penalties in cases of copyright piracy on commercial scale ^[19].

Enforcement of Copyright

The TRIPS Agreement obliges countries to take effective action to prevent infringement for the enforcement of Copyright. It calls for fair and equitable procedures, appropriate judicial mechanism, criminal and civil procedures, damages etc.

Civil and Criminal Procedures

The TRIPS Agreement outlines fair and equitable procedures for the proper enforcement of Copyrights ^[20]. Aggrieved party would be allowed to be represented by independent counsel. If necessary evidence presented before the judicial authorities should be kept confidential ^[21]. If an imported good involves infringement of Copyright, the judicial authorities could order to prevent "entry into the channels of commerce ^[22].

The authorities could also order the infringer to pay adequate damages ^[23], which should cover the costs of injury and litigation. If the allegations are wrongly levelled and an abuse of enforcement procedures is proved, the court could order that the defendant should be indemnified ^[24]. If there is a delay in imparting justice that could result in irreparable harm to the right holder, the judicial authorities could initiate provisional measures. Here again the defendant could be indemnified if the

complaint is proved wrong ^[25]. A right holder could request the customs authorities to suspend importation of pirated copyrighted goods ^[26]. However, in such cases adequate evidence should be provided to the competent authorities. Besides, the authorities could also demand security from the complainant ^[27]. The TRIPS Agreement provides for criminal procedures and penalties in case of copyright piracy on a commercial scale ^[28]. In such case remedies could include imprisonment or monetary fine sufficient to provide a deterrent, seizure, forfeiture and destruction of the infringing goods.

Dispute Settlement

Article 64 of the TRIPS Agreement states that Articles XXII and XXIII of GATT 1994 as elaborated by Dispute Settlement Understanding (DSU) shall apply to TRIPS cases as well. However, provisions of non-violation complaints and situation complaints could not be invoked in TRIPS cases at least for five years ^[29]. Member nations are also obliged to maintain "transparency" by publishing and notifying all laws and regulations, final judicial decisions, administrative rulings to the TRIPS Council. This would enable the Council to examine the implementation of the TRIPS Agreement ^[30].

Transitional Arrangements

Even though the TRIPS Agreement does not differentiate between countries vis-a-vis their stage of technological development, it provides for "transitional arrangements" ^[31] regarding implementation. Accordingly when the WTO Agreements took effect on 1 January 1995, developed nations were given one year to promulgate law and practices that conform with TRIPS Agreement ^[32]. Developing countries along with countries in the process of transformation from a centrally planned to a free enterprise economy would have a five year transition period ^[33] and the least developed countries would get a 10 year transition period ^[34].

The TRIPS Council

The TRIPS Agreement also establishes a Council for Trade Related Aspects of Intellectual Property Rights ^[35]. This Council is supposed to monitor the operation of this Agreement. It shall also provide a venue for the nations to discuss TRIPS matters. The Council shall also oversee the compliance of countries with their TRIPS obligations. Under Article 63, every country is supposed to notify its laws and regulations to TRIPS Council. The Council shall also provide assistance to needy nations in matters related to TRIPS provisions in the context of dispute settlement procedures. The Council will also work hand in hand with other organisations like World Intellectual Property Organisation (WIPO) ^[36].

Copyright Cases Under Trips

Japan-Measures concerning sound recordings (Complainant: United States)

The complaint was filed by the United States against Japan in Dispute Settlement Body (DSB) of WTO ^[37]. As per the TRIPS Agreement, all WTO members should provide certain civil rights and remedies in sound recordings originating in other WTO members, grant national and most favoured nation treatment to such sound recordings and also provide criminal procedures and penalties for the commercial piracy of sound recordings.

Developed nations like Japan should comply with these provisions from 1 January 1996. But the Japanese legal regime for the protection of sound recordings in Japan was inconsistent with TRIPS provisions. The U.S. also cited the absence of sufficient protection to past performances. The European Community (EC) filed a similar complaint as well. The complaint sought Japan to implement legislation relating to its TRIPS obligation^[38]. The EC contended that Japan by virtue of Articles 14.6 and 70.2 of TRIPS Agreement in conjunction with Article 18 of the Berne Convention, 1971 was required to grant copyright protection to producers and performers of sound recordings for a period of 50 years from the end of the year in which the fixation was made or the performance took place and which had not yet fallen into public domain. This implied that those works which had come into existence since 1 January 1971 had to be given TRIPS level protection for the remainder of the 50 year period. This is because the TRIPS Agreement became effective for the developed country members of the WTO on 1 January 1996. However, the Japanese Legislation of 1994 only provided for protection of those sound recordings produced after 1 January 1971. As a consequence to these complaints Japan reached a mutually agreed solution and had initiated amendments to the Japanese Copyright Law on 26 December 1996. This law which entered into force on 25 March 1997, provided protection to performers and producers of sound recordings in accordance with the provisions of TRIPS Agreement.

Ireland: Measures affecting the grant of copyright and neighbouring rights (Complainant: United States)

In this case, the United States alleged that Ireland's copyright law obligations under the TRIPS Agreement were inconsistent, i.e. with Section 1 of Part II and Article 70 of the TRIPS Agreement^[39]. However in a communication dated 6 November 2000, the United States, Ireland and the European Communities notified the Dispute Settlement Body that a mutually agreed solution was reached. Accordingly, Ireland would first pass a bill to address these issues and would then amend its copyright law in conformity with TRIPS. Ireland complied with this by way of the Intellectual Property (Miscellaneous Provisions) Act, 1998 (28 of 1998) and by passing the Copyright and Related Act, 2000 (28 of 2000). In another case in which United States was complainant and EC was respondent^[40], on 6 January 1998, the US requested consultations with the EC regarding similar measures as in WT/DS82 in respect of Ireland. On 9 January 1998, the US requested the establishment of a Panel and on 6 November 2000, the parties notified the DSB that they had reached a mutually satisfactory solution.

Denmark: Measures affecting the enforcement of intellectual property rights (Complainant: United States)

Complaint was filed by United States against Denmark before Dispute Settlement Body of WTO^[41]. The consultation date set up for this case was 14 May 1997, the matter was regarding Denmark's alleged failure to make provisional measures available in the context of civil proceedings involving intellectual property rights. The US contended that this failure violates Denmark's obligations under Articles 50, 63 and 65 of the TRIPS Agreement. On 7 June 2001, the parties to the dispute notified to the DSB a mutually satisfactory solution on the matter.

Sweden: Measures affecting the enforcement of intellectual property rights (Complainant: United States)

Complaint was filed by United States against Sweden before Dispute Settlement Body of WTO^[42]. The consultation date set up for this case was 28 May 1997, the matter was with regard to Sweden's alleged failure to make provisional measures available in the context of civil proceedings involving intellectual property rights. The US contended that this failure violates Sweden's obligations under Articles 50, 63 and 65 of the TRIPS Agreement. In a communication dated 2 December 1998, the two parties notified a mutually agreed solution to the present dispute.

European communities: Enforcement of intellectual property rights for motion pictures and television programs (Complainant: United States)

In this case us was complainant and European Communities was respondent^[43]. The consultation request was made by us to DSB. This request, dated 30 April 1998, is in respect of the shortage of enforcement of property rights in European Communities. The US claimed that a big number of TV stations in European Communities regularly broadcast copyrighted motion pictures and tv programs without the authorization of copyright owners. The US contended that effective remedies against infringement of copyright don't appear to be provided or enforced in European Communities in respect of those broadcasts. The US alleged a violation of Articles 41 and 61 of the TRIPS Agreement. On 20 March 2001, the parties to the dispute notified a mutually satisfactory solution on the interest the DSB.

Greece-Enforcement of intellectual property rights for motion pictures and television programs (Complainant: United States)

During this case also the consultation request was made by us to DSB^[44]. This request, dated 4 May 1998, was in respect of the shortage of enforcement of property rights in Greece. The US claimed that a big number of TV stations in Greece regularly broadcast copyrighted motion pictures and tv programs without the authorization of copyright owners. The US contended that effective remedies against infringement of copyright don't appear to be provided or enforced in Greece in respect of those broadcasts. The US alleged a violation of Articles 41 and 61 of the TRIPS Agreement. On 26 March 2001, the parties to the dispute notified a mutually satisfactory solution on the interest the DSB.

United States-Section 110(5) of the US copyright act (Complainant: European communities)

Regarding the world of copyright, it's the Berne Convention, 1971 and therefore the TRIPS Agreement that form the general framework for multilateral protection. and therefore, the parties involved during this dispute, the EC the complainant and therefore the us the defendant are both signatories to the Berne Convention, 1971. The dispute cares with the amendment made to Section 110(5)^[45] of the US Copyright Act of 1976^[46].

Facts of the case

This was a case handling the rights of a copyright holder, which were contained in Article 11bis (1) (iii) of the Berne Convention, 1971. In times these sorts of cases associated with broadcasting

are lodged frequently. This is often thanks to the proliferation of economic establishments like cafes, restaurants, tea-rooms, hotels, large shops, trains, aircrafts etc. and their practice to draw in people by providing broadcast programmers. Thus, aside from direct audience a further section of public is made, often for profit, in such establishments. This text enables the author to regulate this new public performance of his work. Article 11bis (l) (iii) may be a specific rule conferring exclusive rights regarding public communication through loud speakers or such other instruments. Consequently, holders of copyright in musical works normally authorise the Collective Management Organisations (CMOs) or performing rights organisations to gather license fees from such commercial establishments and distribute royalties to the respective right holders. Article 11(l) (ii) states that the authors enjoy the prerogative of authorising the general public performance of their works. EU claimed that the new provisions, resulting from the amendment made to Section 110(5) folks Copyrights Act of 1976, placing limitations on the exclusive rights of copyright owners were inconsistent with 11 bis (l) (iii) and 11(l) (ii). Under new provisions stated that the subsequent aren't infringements of copyright.

- a. Communication of transmission of performance using "a single receiving apparatus" commonly utilized in private homes, to the general public.
- b. Communication of audio-visual programs (originated by a radio or television broadcast station) to the general public by commercial establishments.

They should be employed by commercial establishments, including restaurants having but 3750 gross sq.ft. and other establishments having but 2000 gross sq.ft. The instrument specifications they want to communicate should be:

1. For audio, less than 6 loud speakers, of which less than 4 loud speakers are located in anybody room.
2. For audio visual, less than 4 audio visual devices of which less than one located in anybody room. However, they might spend to six loud speakers of which less than 4 loud speakers should be during a single room.

The types of transmissions covered original broadcasts over the air or by satellite rebroadcasts by terrestrial means or by satellite, cable transmissions of original broadcasts and original cable transmissions or other transmissions by wire.

These amendments were largely supported the facts of a case decided by the us Supreme Court. within the case of Twentieth Century Music Corporation v. Aiken 422 U.S. (1975). The Court held that an owner of a little nutriment restaurant wasn't responsible for playing music by means of a radio with outlets to four speakers within the ceiling; the dimensions of the shop was 1,055 square feet. This exemption came to be known a "homestyle exemption". 'The 1998 Amendment added a replacement exemption that's termed a "business exemption". The business exemption broadened the scope by expanding the dimensions of establishments.

Parties contentions

One of the major issues in this dispute is the interpretation and application of Article 13 of the TRIPS Agreement to the facts of this case. Article 13 entitled "Limitations and exceptions"

provides: Members shall confine limitations or exemptions to exclusive rights to certain special cases.

which don't conflict with a traditional exploitation of the work and don't unreasonably prejudice the legitimate interests of the proper holder.

The United States claimed that these exceptions contained in Article 13 were applicable to the Articles of the Berne Convention, 1971 incorporated into TRIPS Agreement. These include Articles 11 bis (l) (iii) and 11(l) (ii) and they came under the scope of "minor exceptions" doctrine that applied to the exclusive rights provided under Article 13 of TRIPS Agreement. The EU claimed that the scope of amendment was too wide. A study conducted by the Congressional Research Service (CRS) regarding the percentage of the US eating and drinking retail establishments that would have fallen in 1995 below the size limits of 3,500 sq.ft and 1,500 sq.ft. Respectively found that:

- a. 65.2percent of all eating establishments;
- b. 71.8 percent of all drinking establishments;
- c. 27 per cent of all retail establishments would have fallen below these size limits.

Besides minor exceptions doctrine was limited to public performance of works for religious ceremonies, military bands and the needs of child and adult education all of them having non commercial character. Consequently an exception to exclusive rights must provide minimum equitable remuneration to right holder. Besides it should also satisfy the three conditions of Article 13 TRIPS Agreement:

- a. Exception to be confined to certain special cas;
- b. Should not conflict with anormal exploitation of the work
- c. Shouldn't unreasonably prejudice the legitimate interests of the proper holder.

Panel legal interpretation

The Panel observed that preparatory works and negotiating history of an Agreement would be relevant to interpret a treaty. Besides, the reports of successive revision Conferences of a Convention needed to be taken into account. Accordingly it should be noted that sub paragraphs (i) and (ii) of Article 11 of Berne Convention originated in the Brussels Act of 1948. This wording remained the same in the Stockholm Act, 1967 and the Paris Act, 1971. The proposal to introduce a general provision permitting States to retain various exceptions that were already in their national laws was turned down at the Brussels Conference in 1948 but still the Conference "entrusted" the Rapporteur, General to provide minor exceptions in national law to be included in the General Report. This made it possible to reach the conclusion that they were intended to apply limitations to Articles 11bis (l) (iii) and 11(l) (i) ^[47]. Consequently it could be concluded that the incorporation of these Articles of Berne Convention, 1971 into the TRIPS Agreement included the entire *acquis* of these provided Articles i.e. the possibility of providing minor exceptions too. Besides, recourse to supplementary means of interpretation, which included the preparatory works of the treaty and the circumstances of its conclusion, provided for exceptions ^[48]. Accordingly, it could be inferred that there were minor exceptions doctrine in the GATT ^[49]. Uruguay Round document as well Based on this the panel held that it was possible to provide "minor exception" the exclusive right in question. The panel then

examined the three criteria test of Article 13 of the TRIP Agreement.

Criterion (1) certain special case

For the United States both subparagraphs (A) and (B) of Section 110(5) of US Copyrights Act, 1976 met the standard of being confined to "certain special cases". But the EU claimed that such an exception should be well defined and narrow in scope. The Panel after making perusal of factual information observed that a substantial majority of eating and drinking establishments were covered by the exemptions provided in subparagraphs 105(5) of the US Copyrights Act of 1976. This means that scope was not narrow^[50]. However, the exemption provided in subparagraph (A) of Section 110(5) of US Copyrights Act, 1976 was well defined, and its scope was narrow.

Criterion (2) normal exploitation of the work

The exemption provided in subparagraph (B) of Section 110(5) of US Copyrights Act, 1976 differentiate between broadcast and recorded music. Thus, communication to the public through broadcasting was exempted while playing of musical works from CDs and tapes was not covered by it. This would create a disincentive for recorded music and hence conflict with the normal exploitation of the work within the meaning of second condition of Article 13 of the TRIPS Agreement.

Criterion (3) unreasonably prejudice the legitimate interests of the right holder

The Panel noted that the exemption provided by subparagraph (B) of Section 110(5) US Copyrights Act, 1976 was substantially large. Besides the ultimate burden of proof to prove otherwise rested with the United States as the member invoking exception. The United States failed to demonstrate that the business exemption granted under subparagraph (B) of Section 110(5) of US Copyrights Act, 1976 did not unreasonably prejudice the legitimate interests of the right holder. Regarding subparagraph (A) of Section 110(5) of US Copyrights Act, 1976, the Panel noted that playing music by the small establishments covered by this exemption had never been a significant source of revenue collection for CMOS. Hence this Section is consistent with Article 13 of the TRIPS Agreement.

Panel decision

Based on this interpretation, the Panel held that

- a. Subparagraph (A) of Section 110(5) of the US Copyright Act, 1976 met the requirement of Article 13 of the TRIPS Agreement and was thus consistent with Articles 11 bis (I) (iii) and 11(I) (ii) of the Berne Convention, 1971.
- b. Subparagraph (B) of Section 110(5) of the US Copyright Act, 1976 did not meet the requirements of Article 13 of the TRIPS Agreement and hence violative of Articles 11 bis (I) (iii) and 11 (I) (ii) of the Berne Convention, 1971

China-Measures affecting the protection and enforcement of property rights (Complainant: United States)

The complaint was filed by United States against China in DSB. On 10 April 2007 the US requested consultations with China concerning certain measures relating to the protection

and enforcement of property rights in China

[51].

Measures at issue

1. China's Criminal law and related Supreme People's Court Interpretations which establish thresholds for criminal procedures and penalties for infringements of Intellectual property rights;
2. China's Regulations for Customs Protection of Intellectual Property Rights and related Implementing Measures that govern the disposal of infringing goods confiscated by customs authorities;
3. Article 4 of China's Copyright Law which denies protection and enforcement to works that have not been authorized for publication or distribution within China.

On 20 April 2007, Japan declare his wish to go for the consultations. On 25 April 2007, Canada and as well as European Communities declare their wish to go for the consultations. On 26 April 2007, Mexico requested to join the consultations. Subsequently, China informed the DSB that it had accepted the requests of Canada, the European Communities Japan and Mexico to participate in the consultations. All these above-mentioned countries joined as third party in the case.

On 13 August 2007, the US requested the establishment of a Panel. At its meeting on 31 August 2007, the DSB referred the establishment of a Panel.

Composition and work of panel and appellate body

On 13 December 2007, the Director-General composed the Panel. On 16 July 2008, the Chairman of the Panel informed the DSB that because of the complexity of issues presented during this case, the Panel wouldn't be able to complete its work within six months from the date of the panel's composition. The panel expected to issue its final report to the parties by November 2008.

Panel's Interpretation

On 26 January 2009, the Panel report was circulated to Members. The Panel interpreted following things:

1. **TRIPS article 61:** The Panel found that while China's criminal measures exclude some copyright and trademark infringements from criminal liability where the infringement falls below numerical thresholds fixed in terms of the amount of turnover, profit, sales or copies of infringing goods, this fact alone wasn't enough to seek out a violation because Article 61 doesn't require Members to criminalize all copyright and trademark infringement. The Panel found that the term "commercial scale" in Article 61 meant "the magnitude or extent of typical or usual business activity with reference to a given product in a given market". The Panel didn't endorse China's thresholds but concluded that the factual evidence presented by the US was inadequate to point out whether or not the cases excluded from criminal liability met the TRIPS standard of "commercial scale" when that standard is applied to China's marketplace.
2. **TRIPS article 59:** The Panel found that the customs measures were not subject to TRIPS Agreement. Articles 51

to 60 to the extent that they apply to exports. With respect to imports, although auctioning of goods is not prohibited by Article 59, the Panel concluded that the way in which China's customs auctions these goods was inconsistent with Article 59, because it permits the sale of products after the straightforward removal of the trademark in some of the exceptional cases.

- 3. TRIPS Article 9.1 and Article 41.1:** The Panel found that while China has the right to prohibit the circulation and exhibition of works, as acknowledged in Article 17 of the Berne Convention, this doesn't justify the denial of all copyright protection in any work. China's failure to guard copyright in prohibited works (i.e. that are banned because of their illegal content) is therefore inconsistent with Article 5(1) of the Berne Convention as incorporated in Article 9.1, as well as with Article 41.1, as the copyright in such prohibited works can't be enforced.
- The Panel concluded that, to the extent that the Copyright Law and the Customs measures as such are inconsistent with the TRIPS Agreement, they nullify or impair benefits accruing to the US thereunder Agreement, and recommended that China bring the Copyright Law and therefore the Customs measures into conformity with its obligations under the TRIPS Agreement. At its meeting on 20 March 2009, the DSB adopted the Panel report.

Implementation of dispute settlement body reports

On 15 April 2009, China informed the DSB that it intended to implement the DSB recommendations and rulings which it might need a reasonable period of time to comply with the reports. On 29 June 2009, China and therefore the US informed the DSB that they had agreed that the reasonable period of time given to China for implement the DSB recommendations and rulings shall be 12 months from the adoption of the report. Accordingly, the reasonable period given to China would be expired on 20 March 2010. On 19 March 2010, China reported that on 26 February 2010, the Standing Committee of the 11th National People's Congress had approved the amendments of the Chinese Copyright Law and that on 17 March 2010, the State Council had adopted the decision to revise the Regulations for Customs Protection of Intellectual Property Rights. Thus, it had completed all necessary domestic legislative procedures for implementing the DSB recommendations and rulings.

Conclusion

The industrial revolution and advancement in technology system has created new form of property. The property which is created through human mind is Intellectual Property and thus the IPRs. After Second World War it was demand of international trade that these rights should be protected. Berne Convention, Paris Convention and many more Conventions came into existence for the protection of IPRs. But the TRIPS under WTO which came into existence on 1 January 1995 have enforcement mechanism and dispute settlement system to protect IPRs and Copyright. Copyright which is one of the category of IPRs is well described in Berne Convention. Copyrights related provisions are contained in section I and part II of the TRIPS Agreement. This Agreement has great significance as regards international protection of the Copyright and it also wants that member countries should also

add its provisions in their domestic laws. TRIPS Agreement also provide that whenever any dispute arises regarding the violation and enforcement of copyrights than that matter has to settled under Dispute Settlement Body of WTO. Eight cases out of ten cases related to copyrights had been settled by consultation and the two cases which were not settled through consultation reached the Panel stage or Appellate stage. The decision of Appellate body is final and binding upon the parties to the dispute. TRIPS protective provisions and dispute settlement system has given relief to right holder. These also promote to make more and more valuable and creative works in the international market.

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6. Id, Article 11bis.
7. Id, Article 11 ter.
8. Id, Article 12.
9. Id, Article 14.
10. Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), 1994.
11. Agreement on Trade Related Aspects of Intellectual Property Rights, Article 3, 1994.
12. Id, Article 4.
13. Id, Article 7.
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26. Id, Article 51.
27. Id, Article 53.
28. Id, Article 61.
29. Id, Article 64.
30. Id, Article 63.
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32. Id, Para 1.
33. Id, Para 2 and 3.
34. Id, Article 66.
35. Id, Article 68.
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43. European Communities-Enforcement of intellectual property rights for motion pictures and television programs, “Request for consultation by the United States”, WT/DS 124/1 dated 7, 1998.
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45. The provision states as under:
46. Notwithstanding the provisions of section 106 the following are not infringements of copyright:
47. communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless-
 - A. direct charge is made to see or hear the transmission; or
 - B. the transmission thus received is further transmitted to the public;
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