



PRIME Analytical Reports

Unlocking Business Potential for Growth

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July 2016

Trademark of Growth:

Inquiring Pakistan's Intellectual Property Rights Regime



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**Trademark of Growth:
Inquiring Pakistan's Intellectual Property
Rights Regime**

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Introduction

Intellectual property (IP) plays an important role towards economic growth, especially in the modern knowledge-based economies. The IP regime deals with protection of trademarks and copyrights and granting patents. Foreign companies take into consideration the IP regime of a country before setting up business.

In Pakistan, protection against violation of intellectual property is weak. Currently, International Property Rights Index (IPRI) ranks Pakistan at 117 among 129 countries. As of late, some progress has been made as USA has moved Pakistan to its watch list from priority list in 2016. However, major issues are still lagging such as the twin problems of copyright violations and enforcements of IP rights laws¹. If these problems persist, Pakistan will be deprived of a sizeable amount of foreign direct investment. Especially now, as Pakistan is expecting high foreign investment pouring into the country as a result of CPEC and an emerging market status, issues of intellectual property rights have become crucial to our development designs.

This report explores the issue of intellectual property rights in Pakistan and attempts to highlight issues around IP rights that can discourage international businesses coming into Pakistan. Its negative impact on innovation by local businesses is also discussed.

This Report:

1

Describes Pakistan's IPR Regime & makes a case for strong IP laws in Pakistan

2

Highlights issues of foreign companies with regards to Pakistan's IPR regime

3

Deals with how a weak IP regime has hurt innovation in Pakistan

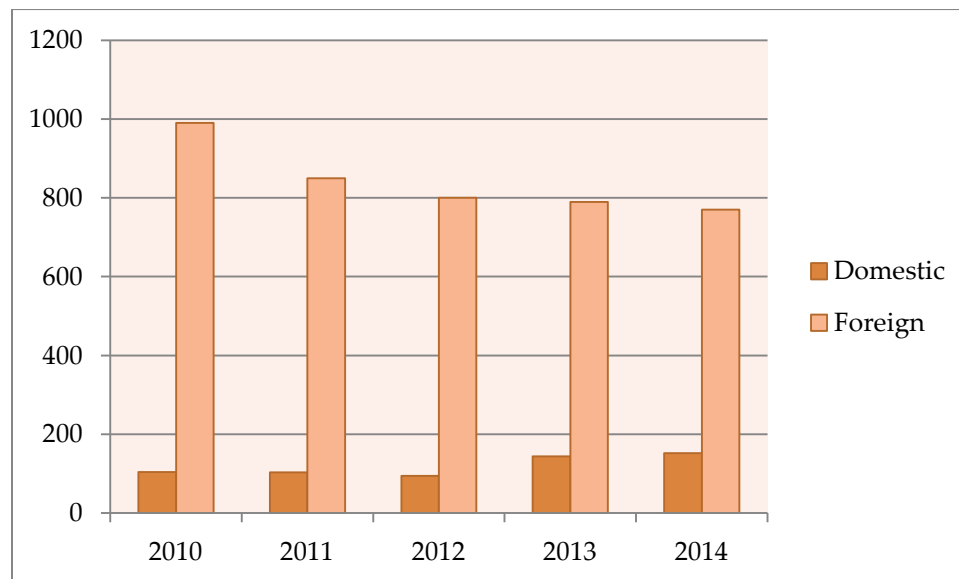
¹ Inside views: Guilty as charged? Pakistan and the special 301 reports. IP Watch. Accessed on 13rd July, 2016.

1. State Of Intellectual Property Rights in Pakistan – Case for IP protection

Pakistan is ranked very low in International Property Rights index both globally and regionally, which is 18 among 20 regional economies. Progress in these rankings has been sluggish. Overtime, Pakistan's score in International Property Rights Index has remained around 3².

The stagnant performance by the country in this area is also clear from Figure 1, which shows the trend in the number of applications for patents. While applications for patents have increased to some extent by local companies, they have consistently been decreasing by foreign companies. This can have a larger negative impact since a higher proportion of the total applications come from foreign companies as shown in Figure 2. Figure 3 shows which type of companies apply for patents.

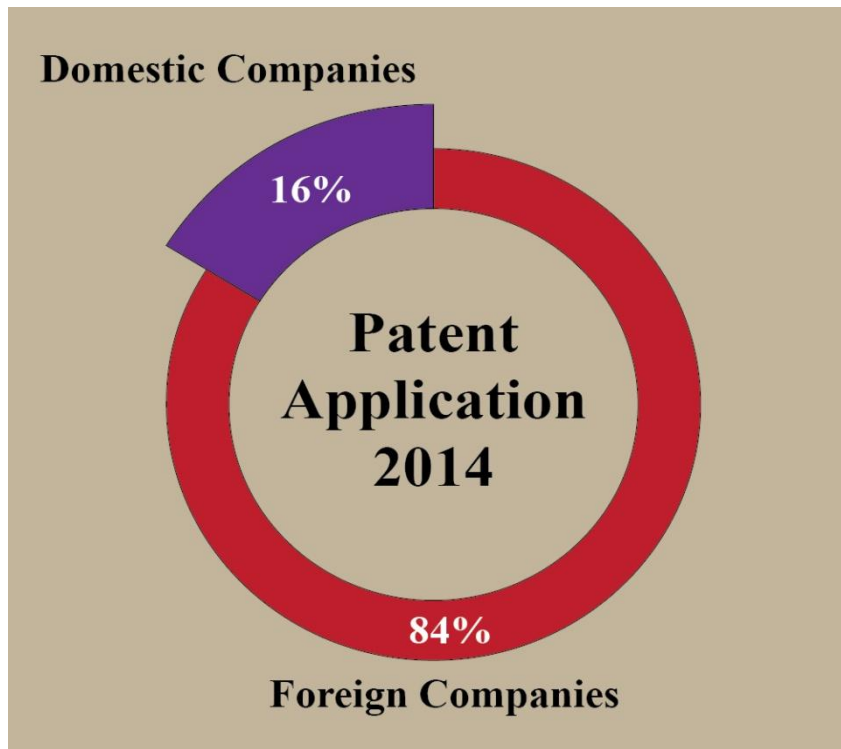
Figure 1: Patent Application – A Trend



Source: IPO Pakistan

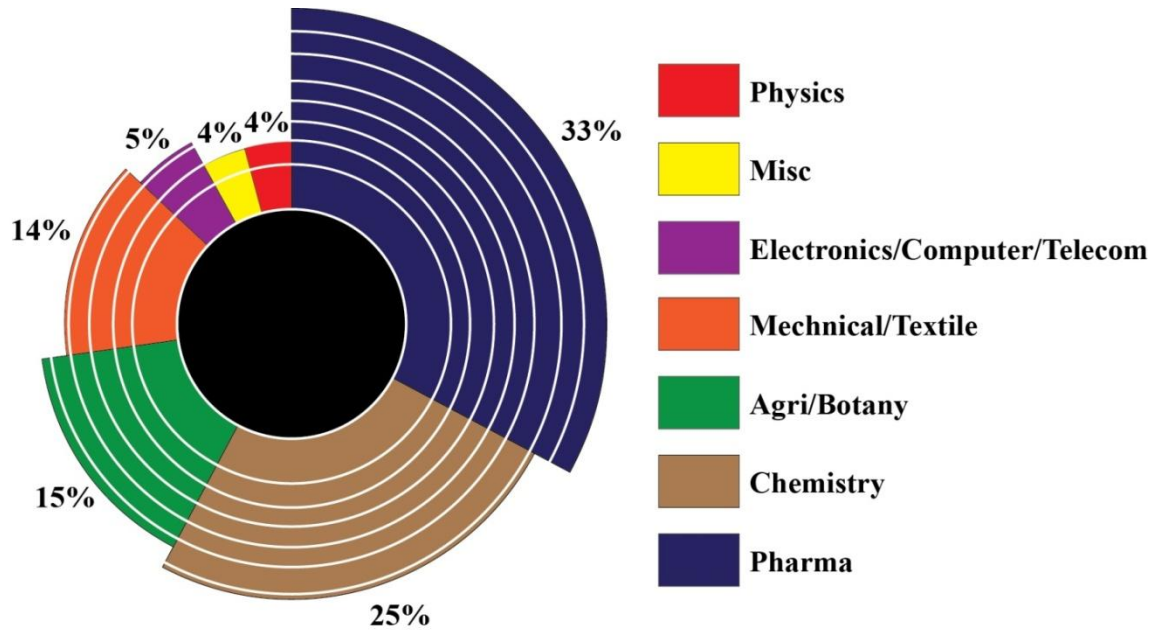
² In 2006 the score was 3.1 and by 2015 the score decreased to just 3.

Figure 2: Who Applies for Patents?



Source: IPO Pakistan

Figure 3: Patent Application – By Type of Company



Source: IPO Pakistan

Box 1: Strong IPR regime – An example

The dividends that a business-friendly IP regime can bring are clear from the case of Singapore. In 1985 International Intellectual Property Alliance declared Singapore as the “world capital of piracy”¹. In the same year 1985, FDI stood at \$56 billion. Since passing Singapore Copyrights Act in 1987, FDI has increased by three times as much to \$2.04 trillion. This in turn has increased the GDP per capita. Experts have attributed this trend to a strong policy framework and political commitment on part of the Singaporean government towards IP regime¹.

It is welcoming that Pakistan has taken further steps to improve the legislation and issues around IP laws. For example, IP tribunals have been set up in Lahore, Karachi, and Islamabad during the last 2 years; timeline for amending major IP laws has been fixed; revisions to laws on copyrights, trademarks, and patents are scheduled to be finalized by the end of 2016; and e-recording system for trademarks and copyrights has been set up.

Despite these efforts the rate of counterfeiting and piracy remains high in Pakistan. Major areas affected by it are the pharmaceutical industry, printed material, optical media, digital media, and software. For example, software piracy was as high as 84 percent in 2015 in Pakistan which was at 86 percent in 2005. In comparison, software piracy in India has reduced from 72 percent in 2005 to 65 percent in 2015. There is need to reform copyrights laws to address piracy - a challenge that has surfaced from digital age. Similarly, deterrent-level penalty must be leveled against criminal infringement of IP laws.

1.1 Case for IP Protection in Pakistan

It is a common perception in Pakistan that piracy and selling of generic substitutes are welfare friendly. However in reality, their adverse affects on the economy and even on the common consumers are significant. By one estimate, Pakistan’s economy lost Rs. 60 billion of annual revenue owing to piracy alone³.

Book piracy is a popular example cited as pro welfare. Since books by publishers like Oxford are very expensive, they become inaccessible for the poor. Even shop keepers complain that sale volumes take toll due to high prices. While this may be true, the negative impact of piracy for

³ Mufti, F. 2016. Lack of awareness on intellectual property rights. Express Tribune. Accessed on 13rd July, 2016.

the economy as a whole and even for individuals in the long run is much higher. Oxford University Press Managing Director Ameena Saiyid claimed that government of Pakistan lost Rs. 25 billion worth of tax revenue in 2012 due to book piracy⁴. To make up for these revenue losses additional taxes are levied which are eventually paid by the same consumers who buy cheap pirated copies.

Additionally, publishers lose their respective market shares which induce them to reduce their scale of operations in Pakistan. This further creates shortages, pushing prices higher. Such shortage for textbooks is often witnessed in Pakistan's major cities, especially for Oxford textbooks, which are mostly preferred for most of the subjects taught in schools.⁵ As explained by Ms. Ameena Saiyid, publishing business is subject to economies of scale, which a limited market share does not allow. Economies of scale reduces the average cost, which is the true source of consumer welfare.

Similar argument holds in the case of pharmaceutical companies which are hi-technology

*Government lost **Rs. 25 billion** worth of tax revenue in 2012 due to book piracy.*

intensive and dependent on large economies of scale. A poor IPR environment has discouraged international and domestic pharmaceutical companies in Pakistan. This also creates shortages and inflates prices. As with textbooks, shortages of medicines are also a routine affair in Pakistan.

What critics of strong IP laws fail to realize is that IP laws can encourage more competition which can drive prices down. For instance, in the case of book publishing, if the same book of

another international publisher is available in the market with the same content and a different author, it can induce major market players like Oxford to reduce prices in order to keep its market share. It can potentially also encourage local writers in Pakistan who currently prefer to get their work published in foreign countries which secures their rights. This will realize as authors in Pakistan will have more options of publishers. Even local Pakistani publishers can also enter the business of book publishing as the business becomes lucrative.

Similar is the case of seed industry in Pakistan. At the time of harvest, Pakistani farmers keep a portion of the seed for next year's crop. This practice deters international seed breeders to work in Pakistan as farmers can use their highly efficient seed without purchasing again which hurts

⁴ Book piracy: Govt losing billions due to lax IPR protection. Express Tribune. Accessed on 13rd July, 2016.

⁵ Shortage of textbooks irks students, parents. Express Tribune. Accessed on 13rd July, 2016.

prospects for recovering costs. Since such seeds are produced with hi-technology, they are naturally expensive. The inability to recover costs has reduced their profits.

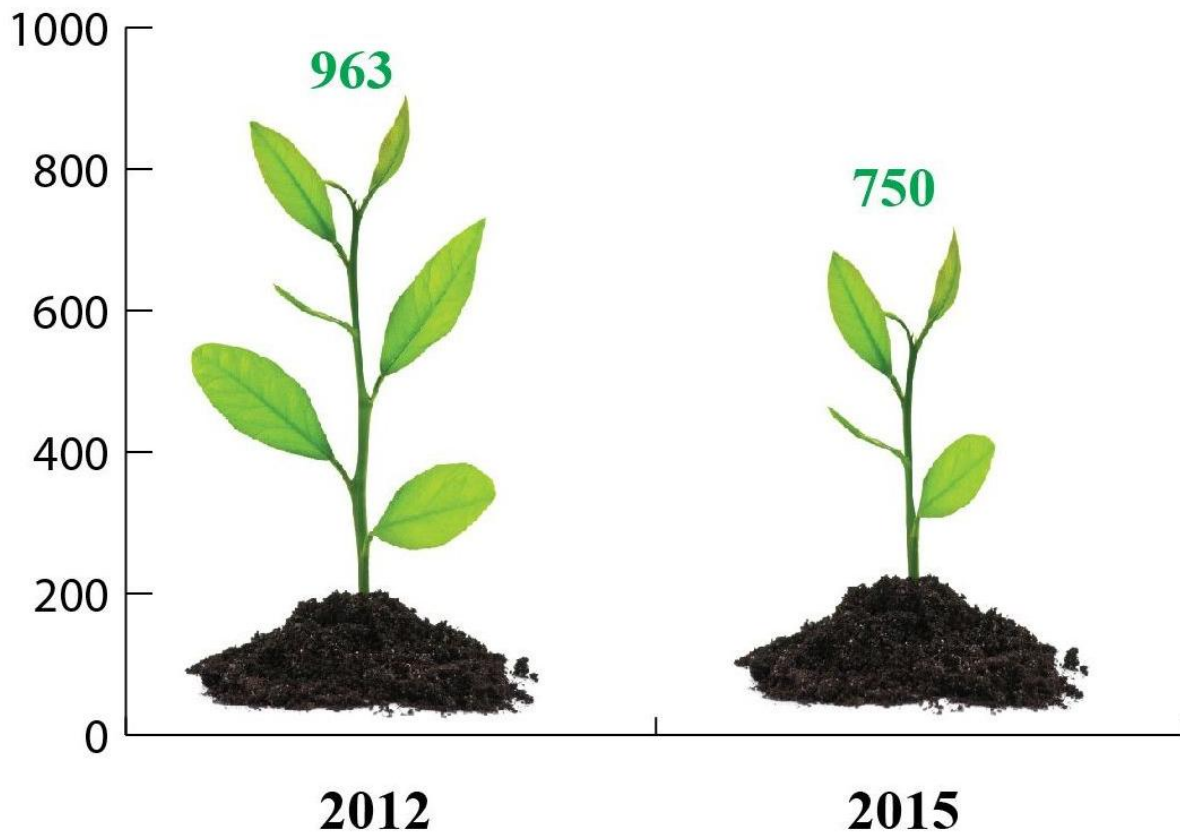
To hedge against this practice, Plant Breeders Act is now about to be passed by Pakistan legislative body. The Act has received considerable opposition on the grounds that it can make cropping an expensive business. It's no wonder that the bill for this law was stuck for more than 10 years in the parliament of Pakistan. During that time, the seed market was flooded with sub-standard seeds. Until this legislation is passed, "no respectable foreign seed company will be willing to pour capital in Pakistan, where only 10 to 15 percent of certified seeds needs are met annually"⁶. It's no surprise then that number of registered seed companies in Pakistan has declined as shown in Figure 4.

Box 2: Plant Breeder Act – An impact assessment

Pakistan can learn from India's example. After passing its version of Plant Breeders Act in 2001, the cotton production in India increased. In 2001, annual production of cotton in India was 12.3 million bales as compared to 8.3 million bales in Pakistan¹. By 2016, India's annual cotton production was 28 million bales compared to 9 million by Pakistan in the same year. Notice the difference in cotton production between the two countries was 4 million bales, which has now increased to 19 million cotton bales. Interestingly, there are only 220 seed companies in India compared to 750 in Pakistan. The reason for their higher productivity is good quality. These highly efficient seeds can easily reduce costs per yield. If used in Pakistan as well, these seeds can increase food production and also improve the food security in Pakistan.

⁶ <http://tribune.com.pk/story/1125896/intellectual-property-plant-breeders-rights-bill-stuck-past-10-years/>

Figure 47: Number of Seed Companies in Pakistan



2. IP regime in Pakistan and International Businesses

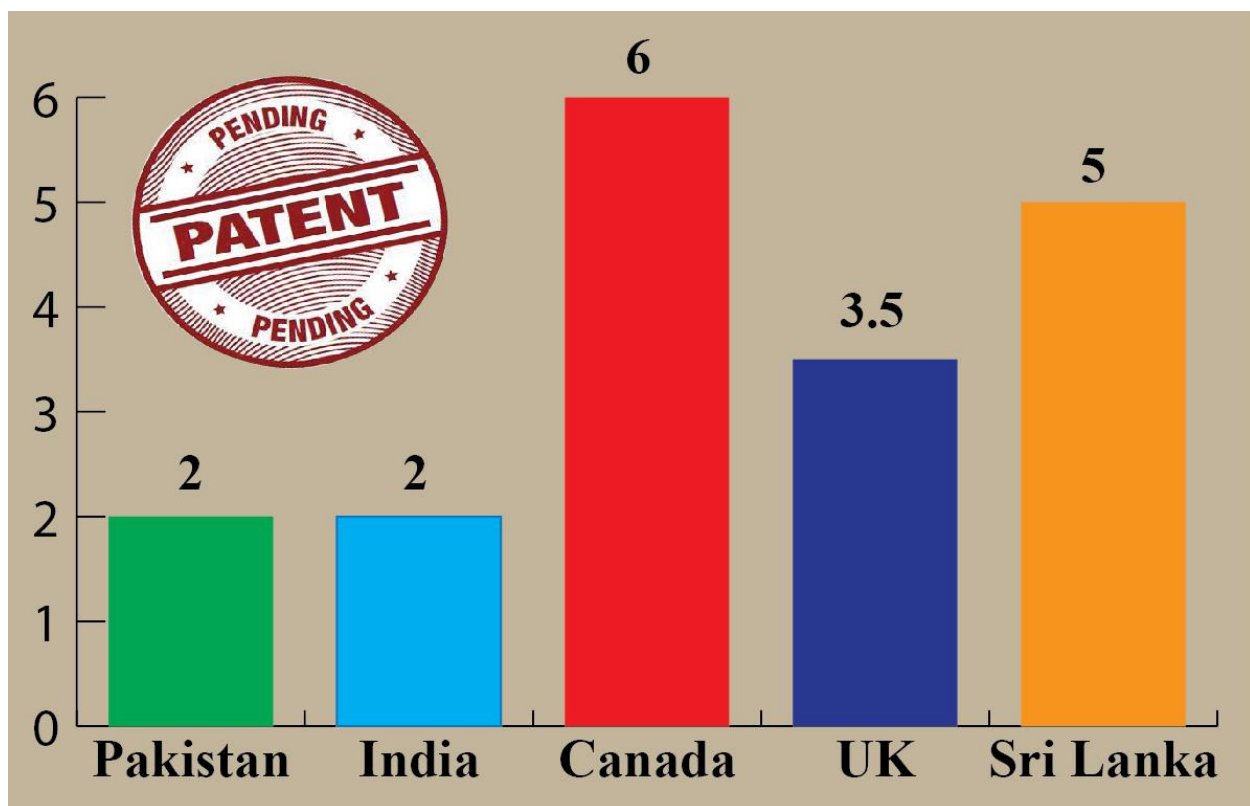
This section highlights issues that international businesses face with regards to IP regime in Pakistan. As mentioned in the preceding section, IP laws in Pakistan are mostly in commensurate with international standards. So why does Pakistan still have a low rank in IP rights index? Why is application for patents by international companies consistently declining? To answer these questions, we have interacted with major businesses that have experience with IP regime of Pakistan. Procedurally there are no major issues for international companies for registration of trademarks and designs. The same is also true for patents.

In Pakistan, the IP laws also protect businesses against copyright infringement, even if it hasn't applied for a trademark. A business can still challenge against copyright violation in the court.

⁷ Data is taken from multiple sources like: The seed industry in Pakistan: Regulation, Politics and Entrepreneurship, Pakistan strategy support program Working Paper. No. 019. ; Muhammad, P. 2016. Plant breeders right: Farmers and seed companies to debate bill, give input. Express Tribune, Accessed on 13th July, 2016.

As for patents, application is a must. But procedural issues are not present for patents as well. For example, the duration it takes for a patent to be granted is quite low at 2 years relative to other countries as shown in Figure 5. The cost of patent application was \$37 dollar in Pakistan for 2010⁸. The total renewal cost for a patent during its 20 years life starting from the 5th year after the patent is granted is \$1,641. In India, the cost for the same is higher at \$2,572⁹. Notice that duration for granting patents and even the life of patents are same in both India and Pakistan and the cost for patent renewal is lower in Pakistan. However, Pakistan's rank in the IPRI for patent protection is higher at 98 among 107 countries than India's 40 for the same year¹⁰.

Figure 5: Time required for granting Patent (years)¹¹



In our discussion with different businesses, the major issue which emerged in intellectual property rights regime in Pakistan is that of enforcement of IP laws and swift dispute resolution mechanism. Elaborating on this issue, Mr. Shehryar Ansari co-chairman Pharma Bureau of Pakistan - which is the consortium of 24 multinational companies – stated that patents do not

⁸ This cost doesn't include the legal fees required by the attorney for patent application.

⁹ These costs both for India and Pakistan are calculated from the respective IP offices of each country.

¹⁰ International property rights index.

¹¹ Data compiled from different sources

have sufficient protection in the country. "If there is a dispute, it takes ages to get a decision from courts and in case the person violating the patent gets a stay order from the court, you are doomed"¹².

The dispute between Government of Punjab and Monsanto, a US-based seed breeding company, over intellectual property rights' enforcement is a clear testament to this. In 2012, Monsanto sought compensation from Punjab Government if farmers violated its intellectual property rights by sharing seeds of BT cotton among themselves rather than buying from authorized distributors. This was a clear case of IP violation since BT cotton seeds are manufactured and not naturally available. Punjab government refused their plea citing arguments for farmers' welfare. Punjab government wanted to make one-time payment to Monsanto for the right to market the seed and let the farmers share it.

Such events discourage foreign seeds companies which can be detrimental to the agriculture of Pakistan. For example, Bollguard variety of BT cotton seed by Monsanto is resistant against bollworms which are the most commonly prevalent pest in Pakistan. As a result, no new foreign seed company has been registered in Pakistan since 1998. Currently, there are only four foreign seed companies in Pakistan. These four companies along with the year of their registration in Pakistan are Monsanto (1984), Pioneer Seeds (1989), Syngenta (1991) and ICI Pakistan (1998).

Since the implementation of TRIPS, we have the Patents Ordinance, which is most relevant in protecting IPRs but there may be problems with implementation.

IP Lawyer Mehnaz Shiraz

The legislative framework, however, is in place and provides full protection. Advocate High Court and IP Lawyer Mehnaz Shiraz commented that "Since the implementation of TRIPS, we have the Patents Ordinance, which is most relevant in protecting IPRs of pharmaceutical MNCs. The law is there, but I think there may be problems with implementation."¹³ Assistant Director at IPO Pakistan Ms. Humaira Shakeel also identified that enforcement is a major drag on intellectual property rights in Pakistan.

¹² Global pharma companies see battle for survival in IPR compliant Pakistan. IP Watch. Accessed on 13rd July, 2016.

¹³ Ibid.

These issues are also present for copyright violations. In case of digital medium, proper legislative coverage is still required in Pakistan. Jehan Ara, President Pakistan Software Houses Association, emphasized that “with an increasing amount of local intellectual property being created due to increasing use of digital and mobile technologies, it is imperative that the IPR regime be made strong but fair which could protect the rights of both businesses and individuals”¹⁴.

It is a positive sign that IP tribunals are set up in Karachi, Lahore, and Islamabad, although only Lahore tribunal is fully functional at the moment. Measures for swift resolution to disputes of intellectual property must be initiated institutionally.

3. Innovation in Pakistan and Intellectual Property Rights

Pakistan’s rank in innovation is 89 among 140 economies while its score for innovation has been hovering around 5.8 during the last five years. Enterprise Survey Pakistan reveals that only 32 percent of Pakistani firms spend on formal research and development activities. Similarly, 43 percent firms reported that they have introduced any new or significantly improved methods for manufacturing products or offerings. Such low spending on innovation may be a result of weak IPR protection in the country. India, which is ranked way ahead of Pakistan in IPRI spends more on innovation. The same can also be said for other regional countries like Singapore and Korea.

32 percent of Pakistani firms spend on some kind of formal research.

Entrepreneurial innovation happens only when the innovators are sure enough to reap all the benefits of their innovations. The relationship between innovation and intellectual property rights is clear from Figure 6 which plots ranking for innovation and IPR protection for 19 selected Asian economies including Pakistan. Weak intellectual property rights regime has caused technological trap even within domestic businesses of Pakistan. This weak outlook of IPR has reduced Pakistan’s global competitiveness. The link between global competitiveness and IPR protection is unequivocal as shown in Figure 7.

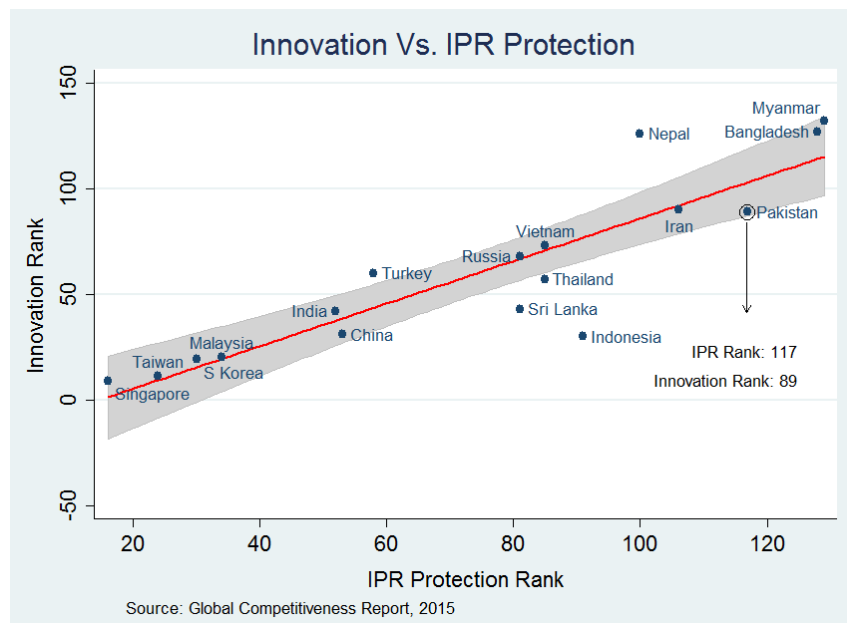
This lack of innovation and competitive has fed itself into low productivity in Pakistan. Take the case of garment industry, there is blatant violation of copyright infringement in Pakistan. Street shops copy designs of women garments of both local and foreign companies. They even openly announce through advertisements that they are selling replicas of certain brands. Such examples are also available for men’s wear. The result is loss of market and low incentive to

¹⁴ IPR regime be made strong: PASHA. The World Trade Review. Accessed on 13rd July, 2016.

innovate and increase productivity. Total factor productivity has actually decreased in garment industry by -11.33 percent per year from 2007 to 2013¹⁵.

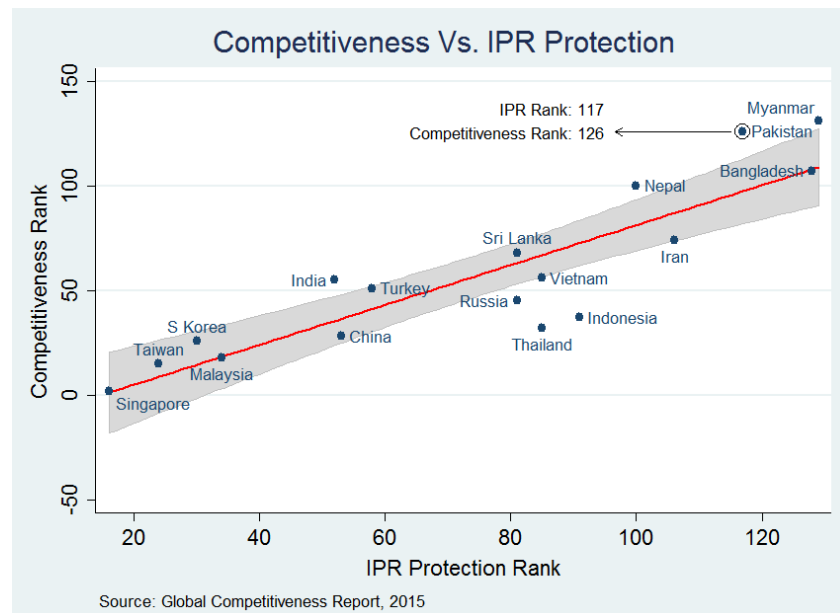
A significant example of how weak intellectual property rights can affect innovation is of software industry. Software industry is entirely knowledge-based which relies a lot on creativity. IT industry in Pakistan is routinely tipped as a bright prospect for Pakistan’s economy in general and employment generation in particular. However, the very nature of industry’s produce makes it very prone to copyright infringement.

Figure 6: Link between Innovation and IPR Protection



Source: Global Competitiveness Report

¹⁵ Based on author’s calculation using World Bank Enterprise Survey

Figure 7: Link between Competitiveness and IPR Protection

Source: Global Competitiveness Report

Our company has largely shifted its business of software development to USA due to copyright infringements in Pakistan.

Kamran Yaseen, Credential Specialist at an IT-based company in Rawalpindi

Mr. Kamran Yaseen, who is Credential Specialist at an IT-based company in Rawalpindi, claimed that copies of the software developed by the company are available in the local market. He further said that due to weak respect for copyright in Pakistan, the company had to dial down spending on various areas including that on Research and Development. Now, he further added, the company has largely shifted its business of software development to USA. It even had to reduce the number of software developers hired by the company. This is one of the reasons that there exists unemployment among software developers in Pakistan.

Ms. Faiza Siddique, a freelance software developer in Islamabad, pointed out that the age of software or an app is very short due to the rapid pace at which software or apps are being developed or upgraded and old ones are phased out from the market. Without security against copyright violations, it is quite difficult to create innovative apps or software for which returns can easily be washed out to copies while timeframe for recovering costs and earning profits is also slim. In our opinion, Pakistan will soon need a legislation which can do to software

Without security against copyrights, it is quite difficult to create innovative softwares in Pakistan.

Faiza Siddique
A freelance Software Developer

industry what a Plant Breeders Act will do to seed industry and Pakistan's agriculture productivity.

Conclusion & Recommendations

Macroeconomic outlook and security situation of Pakistan has improved which is evident from the emerging market status that was accorded to Pakistan few months back. In addition to this, the CPEC investment has made Pakistan a lucrative place for investment by international companies. However, these are not the only factors that international companies take into consideration when venturing their capital in a country. Prominent among other factors is the state of intellectual property rights of the host country. A company draws as much value from physical assets as it draws through its creative assets.

Pakistan is ranked low in terms of property rights i.e. at 117 among 129 countries which is why foreign brands are not always interested in investing in Pakistan. Even though the legislative framework is somewhat sufficient for protection of intellectual property, the enforceability of the said laws still remains a distant dream. Along with this, the dispute resolution mechanism in case an intellectual property is challenged in the court is also lengthy adding to the worries of both foreign and domestic businesses. This reduces competition in the market and forestalls domestic drive for both innovation and high productivity.

The report has made a case for how strong IP laws can be both pro-welfare and pro-growth. Some of the recommendations made in the report are as follows:

1. IP tribunals should be made functional in Karachi and Islamabad and they should be set up in other cities as well.
2. Ex officio authority should be accorded to the enforcement authority of IP laws.
3. Legislation for protection of software industry against copyright violations must be made.
4. Enforcement of IP laws should be strengthened through institutional reforms.

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8. Labour Productivity: How to get ourselves ahead of the curve?
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