



Global Marketing

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Chapter 4

Analyzing Political and Legal Environments

World Legal Systems

- **Global trade and marketing are subject to laws, rules, and regulations formulated by diverse legal systems.** There are five different legal systems in the world. No one system dominates the world's legal landscape, but common, civil, and Islamic law are dominant. Only about 30% of the world's GDP is generated in countries governed by civil and common law systems.
- **Civil Law** - Found in Europe, Asia, Central and South America. Consists of codified legislation applied and interpreted by judges.
- **Common Law** - Adopted in most States of North America. Court adjudications are the primary source of law, although governments pass statutes and legislation. Each case that raises new issues is considered on its own merits, and then becomes a precedent for future decisions on that same issue.
- **Islamic Law** - One of the problems in dealing with Islamic law in the realm of international business is that **Islamic law has many inconsistencies that make predictability in business matters a major concern.** Additionally, the inconsistencies often **vary between different sects** of Islam. While this does present issues to international business dealings, each of the Islamic states in the Gulf region currently has a set of **codified corporate laws.**

Legal Issues for Global Marketing

- Global marketers must understand the legal systems in which they operate. Common legal scenarios include:
 - Sales agencies terms
 - Distributorship agreements
 - Customs and international trade regulation
 - Export incentives and controls
 - Arbitration
 - Patents
 - Trademarks
 - Intellectual property rights
 - International technology transfer
 - Political vulnerability of the product in the target market
 - Parallel importing
 - Marketing mix regulations
 - Consumer protection
 - Employment practices
 - Environmental regulations.

Intellectual Property Issues: Trademarks, Copyrights and Patents

- All intellectual property law is based on the **principle of territoriality**. Each state or country determines for its own territory, **what** is to be protected, **who** should benefit from such protection and for **how long**, and **how** the protection should be enforced.
- **Changing international relations** between states may present legal problems relating to intellectual property.
- The main issues to be analyzed are related to:
 - **Trademarks**
 - **Patents**
 - **Software piracy**
 - **Copyrights**
 - **Trade secrets**

Intellectual Property Issues: Trademarks

- Companies regard their trademarks as being among their most valuable assets. **Trademarks protect words, names, symbols, sounds, or colors** that distinguish goods™ and servicesSM.
- Trademarks, unlike patents, **can be renewed forever** as long as they are being used. The rights to a trademark are **gained by registration in most countries, “first to file”, or by their use “first to use”, depending on country legislation.**
- International trademark **disputes** may arise from a number of causes.
 - For example, the same term regarded as distinctive in one country, may not be in another because of different consumer perceptions of a brand from one country to another.
 - Another cause of disputes is the mistaken belief that a trademark covers similar products or services.
- **A global arrangement for trademark protection** is exemplified by the Madrid Agreement administered by the International Bureau of the World Intellectual Property Organization (**WIPO**) in Geneva, Switzerland.
- Registration of a trademark under the agreement provides for the legal equivalent of registration in member countries designated by the mark owner and affords the owner protection in all member countries for a ten-year period. Moreover, **registration in one language is sufficient for all countries**

EXAMPLE

TRADEMARK

esempio di marchio

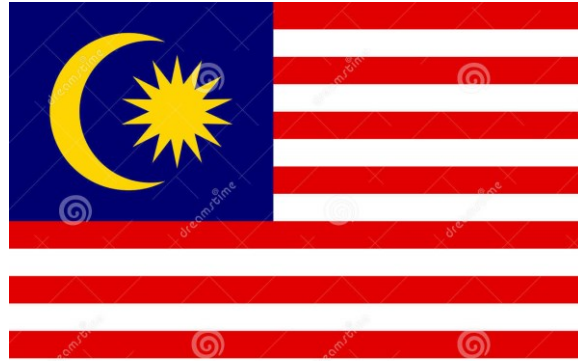


example



the prefix MC is an IP?

NO



YES



Intellectual Property Issues: Trademarks

- China has a “first to file” trademark system that requires no evidence of prior use or ownership, leaving registration of popular foreign trademarks open to anyone, including some well-known global brands



- in some cases it is necessary to register a different trademark in some countries



Intellectual Property Issues: Patents

- Patent is a form of protection that provides a person or legal entity with **exclusive rights for making, using or selling a concept or invention and excludes others from doing the same for its duration:**
 - Patents can be maintained for a **maximum of twenty years**
 - Decision to grant or reject a patent rests with **each country authority**
 - **Patent treaties** provide the option of submitting **one patent for protection in several nations**
- There are a number of international patent agreements in Europe, Asia, US and Africa.
- The Patent Cooperation Treaty (**PCT**) is administered by the World Intellectual Property Organization. It addresses procedural requirements for obtaining a patent and aims to simplify filing, searching, and publication of international patent applications. All EU countries are members of the Treaty.
- The Eurasian Patent Organization (**EAPO**) members include Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan and Turkmenistan. Under the Eurasian Convention a single patent application designating all of the member countries is filed in a single language (Russian) in a central patent office in Moscow. Administration of that application is similar to that of the European Patent Office. Maximum duration of a patent is twenty years.

Intellectual Property Issues: Patents

- Of all countries, the **China had the most patent applications, followed by United States, Japan and the Republic of Korea**. There are a number of factors that account for the number of patent filings in a given country. Some of these are the amount of money invested in R&D and education.
- **In Africa, there are two intellectual property organizations**, The African Regional Intellectual Property Organization (ARIPO) whose members are mainly English speaking and the African Intellectual Property Organization for French speaking nations.

Patents as Measure of Innovation

- Of all countries, China granted the most patents followed by United States and Japan.
- Yet when viewed by number of patents granted per million people, which takes the size of country into consideration, China was in second place in between Germany (first) and United States (third).

COUNTRY		Patents granted	Patents granted per Million People	
China*	1	404,208	3,472	2
USA	2	303,409	1,063	3
Japan	3	191,302	669	6
Republic of Korea	4	101,678	500	7
Russia	5	34,283	428	8
Canada	6	26,424	781	5
Australia	7	23,744	1,016	4
Germany	8	15,561	5,233	1

TELL ME WHY.....

Patent Granted by Country (2017)

Source: Adapted from World Intellectual Property Indicators.

www.wipo.int/edocs/pubdocs/en/wipo_pub_941/2017.pdf [accessed January 25, 2019].

*China was also first in patent applications, United States second, Japan third, Korea fourth, and Germany fifth.

Intellectual Property Issues: Copyrights

- Copyrights give ownership to "**original works of authorship**," such as literary works, paintings and video games:
 - In U.S. and EU, copyrights registered for the life of the author, plus 70 years
 - Copyrights extend to other countries if they are part of an international copyright treaty, convention or organization
 - In Canada, copyrights extend 50 years after the life of the author.
- One of the most contentious issues is the question of data bases, digital recordings and websites.
- Producers of sound recordings must have the right to prevent the unauthorized reproduction of recordings for a period of 50 years.

what will happen with generative AI?

- Generative Artificial Intelligence (AI), the advanced form of AI that can autonomously create original content such as text, images and music, is rapidly transforming the landscape of creative production.
- **In the traditional legal systems, intellectual property rights are assigned to the authors of the work**, who have invested time and effort in the creation of creative works, and arise simultaneously with the birth of the work itself.
- These rights give authors control over the use and distribution of their works and allow them to profit from their work. But when a work is generated by an AI algorithm without the direct intervention of a human being, complex questions emerge, which do not have clear answers and raise important **legal and ethical implications**.
- Some countries are trying to address the issue through changes to existing laws. For example, in some cases, **intellectual property rights have been assigned to the owner of the generative AI or the programmer who developed it**. However, this raises questions about how to define the value of human contribution versus that of AI. In addition to legal challenges, important ethical questions also arise. Generative AI can produce works that are indistinguishable from those created by humans. This raises **questions about the genuineness and authenticity of creative works**. Furthermore, the fact that AI can be used to massively generate works raises questions about the originality and individuality of artistic creations.

what will happen with generative AI?

- The growing diffusion of artificial intelligence has brought with it, **in the absence of ad hoc regulations**, profound reflections regarding its role in society and in intellectual property law.
- In fact, **no state in the world has yet adopted specific regulations on AI relating to the protection of intellectual property.**
- The **EU's AI Act**, Briefing Europe, a pioneer in the field, saw the approval by the European Parliament last June 14 of the text of the Artificial Intelligence Act, but before this comes into force it will still be necessary to wait for the approval of the other institutions of the European Union . Therefore it can reasonably be expected **to become law between the end of 2024 and 2025.**
- Japan is also preparing specific legislation on AI which should see the light in the coming months.
- In the field of intellectual property, in particular, two issues of fundamental importance emerge related to the topic of AI: **the identification of the subjects legitimated to hold the rights of a creation generated by an AI system and the feasibility of protecting AI systems through intellectual property tools, in particular through patents.**

Intellectual Property Issues: Software Piracy

- **Software piracy is the unauthorized reproduction and illegal distribution of software**, whether for business or personal use. Software piracy is endemic throughout the world, but especially so in the **emerging economies**.
- **How can software be protected?** The best way to protect software is to apply for a patent—but the software must have some novel application. A developer needs to prove that the software's processes or result constitutes a service that did not previously exist
- According to agreements by the World Trade Organization (WTO) and the Trade-Related Aspects of Intellectual Property Rights (TRIP), **any written software has an automatic copyright**.

Top 10 Economies in Commercial Value of Pirated PC Software, 2017

Country	Pirated Value (USD Million)	Piracy Rate (%)
United States	8,612	15
China	6,482	66
India	2,474	56
France	1,996	32
Brazil	1,665	46
Germany	1,556	20
United Kingdom	1,421	21
Russia	1,341	62
Italy	1,278	43
Indonesia	1,092	83

Source: https://gss.bsa.org/wp-content/uploads/2018/05/2018_BSA_GSS_Report_en.pdf

Intellectual Property Issues: Trade Secrets

- Trade secrets are information that companies keep secret to give them an advantage over their competitors:
 - Not protected in the same way as trademarks or patents
 - Must be guarded by non-disclosure and confidentiality agreements initiated by the global marketer
 - Unfortunately, lack of formal protection means that a third party can duplicate and use secret information if revealed
 - FIRMS OFTEN ASK EMPLOYEES TO SIGN A NDA

Trade Regulations

1947-1994

- General Agreement on Tariffs and Trade (**GATT**) was the main international organization that codified rules for trade liberalization. Its major goal was to work towards agreement to lower tariff restrictions.
- One of the major problems of the GATT agreement was that services were not included even though they had become a significant component of overall world trade
- Another problem was an increasing protectionist policy among many nations in order to subsidize their agricultural exports.

1995

- GATT was replaced by the **World Trade Organization (WTO)**
 - a forum for governments to negotiate trade agreements and to settle trade disputes
 - Approximately 164 nations are members of the WTO
 - About 75 % of the observers are developing countries
 - Unlike the GATT agreement the WTO covers services, including intellectual property. In addition, non-tariff barriers such as discriminatory product standards are also included in the agreement.

Resolution of Trade Disputes: Arbitration and Mediation

- Trade disputes arise often between private parties such as businesses, between two countries or between an individual and a country.
- There are three ways to settle a dispute:
 - **Litigation through a court:** it can be very costly and time consuming
 - **Arbitration:** is a course of action by which a dispute is submitted by the parties to one or more arbitrators whose decision **is binding**.
 - **Mediation:** it is a process where two parties agree on a mediator who tries to guide them to a satisfactory settlement of the dispute. **It is not binding**.
- There are a number of **international organizations that provide arbitration, mediation services, or both**. Examples of arbitration centers include the International Center for Settlement of Investment Disputes (ICSID), the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, the London Court of International Arbitration and the International Chamber of Commerce (ICC)

Marketing Mix Regulations: Product Standards

- A key concern for global marketers is the presence of **different product regulations and standards on global, regional or national levels**: multinational manufacturers must adapt product strategy whenever necessary to fulfill required standards. The production, processing, distribution, retail, packaging, and labeling of food products are governed by a mass of laws, regulations, and codes of practice and guidance that differ from one country to another.
- **Product planning**
 - End products must meet standards in each target country
 - How does a company efficiently and cost-effectively accomplish this task?
- There is no such thing as a worldwide standard for products: the EU has begun a process of **harmonization of standards** that will apply to all its members.
- The term “harmonization” refers to a process by which the technical requirements of various standards have been made equivalent or identical.

The International Organization for Standardization (ISO)

is an NGO headquartered in Geneva (Switzerland) consisting of a network of national standards institutes of over 160 countries. Its primary task is to develop international product standards based on consensus with its members. Compliance with ISO standards is voluntary.



Regulation of Communication

Advertising regulations

- Advertising regulations are nationally and locally determined: every country determines how to regulate advertising that is perceived to be fraudulent or misleading.
- In the European Union, advertising is self regulated. According to the **European Standards Advertising Alliance**, self-regulation (SR) is “a system by which the advertising industry actively polices itself. The three parts of the industry (advertisers, advertising agencies, and media) work together to agree standards and to set up a system to ensure that advertisements which fail to meet those standards are quickly corrected or removed.”
- The Antitrust Authority has condemned the company that produces Dash for misleading comparative advertising: Henkel, which produces the main competitor, celebrated



Political Risk

- **Political risk may be defined as the probability that a set of unwanted events may occur:**
 - **"Unwanted events"** are those that can impact upon a firm's performance to the extent that they threaten the firm's value
 - **Firm-specific risks** are directed at a particular company (micro): for example, expropriation of the firm's assets, kidnapping employees, limits on the transfer of certain technologies, and breach of contract.
 - **Country-specific risks** are nation-wide and impact all firms in a given industry (macro): for example, repatriation of profits, civil unrest, currency inconvertibility, forced local shareholding and nationalization of an industry
- **Assessing political risk** should be a major concern for companies that have:
 - High ratios of international to domestic revenues
 - Significant amounts of capital invested abroad
 - Dependence on a global supply chain
 - Significant concentration of assets or operations in a single region or country
 - Dependence on international growth

Categories of Political Risk

	Government Risks	Instability Risks
Firm-Specific Risks	<ul style="list-style-type: none">• Discriminatory regulations• "Creeping" expropriation• Breach of contract	<ul style="list-style-type: none">• Sabotage• Kidnappings• Firm-specific boycotts
Country-Level Risks	<ul style="list-style-type: none">• Mass nationalizations• Regulatory changes• Currency inconvertibility	<ul style="list-style-type: none">• Mass labor strikes• Urban rioting• Civil wars

Source: Adapted from Wagner, D. (2000). "Defining 'Political Risk'", International Risk Management Institute. www.irmi.com/IrmiCom/Export/Articles/2000/Wagner10.aspx [Accessed March 21, 2007.]

Measuring Political Risk (1)

- The major issues that concern political risk are its measurement and management.
- **Risk is determined by the exercise of political power**, either by government or groups such as unions and activists.
- The probability that political risk may occur can be measured by **monitoring whether political unrest and instability may occur and eventually threaten the firm's performance**.
- Political risk assessment is done by **risk management experts** employed in transnational firms, banks or by consulting firms.
- Methods for assessing political risk range from **comparative techniques of rating and mapping systems** to **analytical techniques such as expert systems and probability determination**. There are two approaches to measure political risk:
 - (1) **Qualitative**, based on expert (economists, union officials, politicians, local businessmen) analysis using Delphi-type techniques,
 - (2) **Quantitative**, which begins with the identification of quantifiable factors that affect political risk.

Top ten high-risk countries

RANK	PRS	#	SACE	#	EIU
1	Somalia	1	Somalia	1	Zimbabwe
2	Congo, D.R.	2	Iraq	2	Chad
3	Iraq	3	Afghanistan	3	Congo, D.R.
4	Sudan	4	Congo, D.R.	4	Cambodia
5	Cote d'Ivoire	5	Zimbabwe	4	Sudan
6	Haiti	6	Korea, North	6	Iraq
7	Guinea	7	Sudan	7	Cote d'Ivoire
8	Zimbabwe	8	Myanmar	7	Haiti
9	Nigeria	9	Uzbekistan	7	Pakistan
10	Myanmar	10	Liberia	7	Zambia
10	Pakistan	11	Eritrea	7	Afghanistan

Note: PRS = Political Risk Services; SACE = Servizi Assicurativi per il Commercio Estero; EIU = Economist Intelligence Unit

Managing Political Risk

- While **political risk** cannot be eliminated, it can, in some cases, **be reduced**:
 - **Insurance** against some political risks is offered by both governmental and private agencies
 - **Share ownership** with host country nationals
 - Participating in **community projects** such as promoting social welfare and rural development projects
 - **Entering markets via non-equity methods** such as licensing and franchising reduce the financial risk of operating in high political risk countries.
 - **Local sourcing of components and hiring resident managers** as much as possible who can create goodwill toward the company rather than employing expatriates.
- In short, it may be possible to do business in countries where at first glance political risk seems to be excessive. However, **careful use of appropriate tools** for the identification, measurement and management of political risk can result in the selection of markets that otherwise might be overlooked.

Risk management strategies

Joint Business Ventures (Equity Sharing)	Partner with local company or individual who understand the local environment.
Licensing	A non-equity contract to manage production.
Adaptation	Adjustments required to lessen the harmful impact of unwanted events.
Flexible Supply Chain	Diversifying supply chains to respond to disruptions.
Localization	Modification of the subsidiary's name, brands, to suit local tastes and to appear as a local, rather than a foreign firm.
Dependency	Keeping the host nation dependent on the subsidiary by controlling distribution, assigning some key positions to host managers.
Lobbying And Prominent Alliances	Legitimate influencing of government policy through trade associations or professional lobbyists.
Community Initiatives	Contributing to local social endeavors such as education and health.
Insurance	Policies covering risks of expropriation, political violence, etc.