



The Future of Intellectual Property Rights in Nepal: Balancing Traditional Knowledge, Innovation and Global Trade in a Digital Age

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DOI : <https://doi.org/10.55248/gengpi.6.0325.11165>

ABSTRACT

The relevance of intellectual property rights (IPR) in developing countries like Nepal is a multifaceted debate, balancing global legal obligations against local socio-economic realities. While IPR frameworks aim to incentivize innovation and protect creators, their implementation in resource-constrained nations often clashes with priorities like affordable healthcare, agricultural sustainability and cultural preservation. Nepal, a least-developed country (LDC), exemplifies these tensions. Despite adopting IPR laws and joining international treaties like TRIPS, systemic challenges weak enforcement, institutional corruption and limited public awareness render IPR largely peripheral to its development agenda. For instance, Nepal's failure to protect traditional products like *gundruk* (fermented vegetables) and *chyang* (barley alcohol) from foreign commercialization underscores the disconnect between global IPR norms and local needs. This paper argues that while IPR systems are not inherently irrelevant, their rigid application in developing contexts risks exacerbating inequalities unless tailored to prioritize access, equity and traditional knowledge. Drawing on case studies, policy analyses and global perspectives, the discussion advocates for flexible IPR regimes that align with Nepal's developmental goals, supported by international cooperation and institutional reforms. This article provides a detailed discussion on the relevance and challenges of intellectual property rights (IPR) in developing countries, with a specific focus on Nepal. The inadequacies of the current system in addressing the needs of local producers and traditional knowledge holders, as well as recent case studies of IPR violations, including those in the Nepali film industry. Specific cases such as the unprotected Golden Oak beverage and the controversies surrounding the film *Aktor: Take One* highlight the gaps in the existing legal framework. The paper also delves into why the IPR sector remains limited in Nepal, addressing issues like inadequate public awareness, weak enforcement mechanisms and limited institutional capacity. It explores the complexities surrounding IPR enforcement, the legal framework governing IPR in Nepal and the interplay between international obligations and national development priorities. The article further examines real-world instances of IPR violations in Nepal, providing examples of stolen local products and infringed trademarks. In doing so, it underscores the importance of strengthening IPR systems to foster a robust innovation environment while addressing the unique socio-economic challenges of developing nations. The paper also touches upon potential reforms and measures to improve the enforcement of intellectual property laws in Nepal.

Introduction

Intellectual Property Rights (IPR) are essential for protecting creative ideas, inventions and innovations that drive economic growth and technological advancement. While these rights are vital in developed economies for incentivizing innovation, their implementation and enforcement in developing countries like Nepal remain a contentious issue. Developing countries often struggle to balance the need for protection of intellectual property with the demands for access to knowledge, technology and resources that are crucial for their economic development. This article analyzes the importance of intellectual property rights in Nepal, a developing country with a complex socio-economic landscape. Nepal's efforts to create a sustainable IPR system are examined, as well as the challenges and inefficiencies that hinder its effectiveness in fostering growth, innovation and economic progress.

Intellectual property rights (IPR) occupy a paradoxical space in global development discourse. Championed by industrialized nations as essential for innovation and trade, they are increasingly scrutinized in developing countries for prioritizing corporate monopolies over public welfare. Nepal, a nation grappling with poverty, limited industrialization and a reliance on agriculture and traditional practices, epitomizes this dichotomy. As a signatory to the TRIPS Agreement, Paris Convention and Berne Convention, Nepal has enacted IPR laws such as the Copyright Act (2002) and the National Intellectual Property Policy (2017). Yet, these frameworks remain overshadowed by systemic inadequacies: underfunded enforcement agencies, rampant trademark infringements (e.g., copycat brands like *Kurmurey* mimicking India's *Kurkure*) and the exploitation of indigenous knowledge (e.g., Korean patents on *chyang*). Critics argue that IPR regimes, designed for technologically advanced economies, often hinder Nepal's access to life-saving medicines, agricultural technologies and cultural assets. Conversely, proponents assert that robust IPR systems could attract foreign investment and stimulate local innovation. This paper explores these tensions, grounding its analysis in Nepal's socio-economic context, global treaty obligations and case studies of IPR's real-world impact. By integrating perspectives from policymakers, NGOs and grassroots communities, it questions the universality of IPR norms and advocates for context-sensitive reforms.

Legal Framework for IPR in Nepal

Nepal has made significant strides in establishing a legal framework for the protection of intellectual property. The country's IPR system is governed by several key laws and policies:

1. **Patent, Design and Trademark Act, 1965:** This act aims to safeguard the interests of creators by providing protection for industrial property, including patents, designs and trademarks. It grants inventors exclusive rights over their creations for a specified period, ensuring that their innovations are protected from unauthorized use.
2. **Copyright Act, 2002:** The Copyright Act protects the rights of creators of literary, artistic and scientific works. It is designed to incentivize creative output and cultural development by granting authors exclusive rights to their works for a specified period.
3. **National Intellectual Property Policy, 2017:** This policy focuses on providing a comprehensive framework for IPR protection in Nepal, including the establishment of mechanisms for the protection of traditional knowledge and the promotion of innovation in various sectors.
4. **Consumer Protection Act, 1998:** This act aims to prevent the imitation of consumer goods and protect consumers from being misled by counterfeit products.

Additionally, Nepal is a signatory to several international agreements, including the **Paris Convention for the Protection of Industrial Property** and the **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**, which set minimum standards for IPR protection and enforcement globally. As a member of the World Intellectual Property Organization (WIPO), Nepal is bound to adhere to international obligations related to IPR protection.

Challenges in IPR Enforcement in Nepal

Despite the legal framework in place, several factors hinder the effective enforcement of IPR in Nepal:

1. **Weak Enforcement Mechanisms:** One of the primary challenges in Nepal is the lack of an efficient and well-equipped enforcement mechanism. The Department of Industry, which handles IPR cases, lacks the necessary judicial authority to address infringement cases swiftly. Consequently, many cases experience significant delays, undermining the effectiveness of the legal system in protecting intellectual property. The slow pace of legal proceedings and the inability to enforce judgments often leave innovators and creators without the necessary protection for their work.
2. **Limited Public Awareness:** There is a general lack of awareness among the public and businesses regarding the importance of IPR and the consequences of infringement. This knowledge gap contributes to the proliferation of counterfeit products and trademark violations. Many local entrepreneurs are unaware of how IPR can benefit their businesses, while consumers often fail to recognize counterfeit goods.
3. **Inadequate Infrastructure:** The infrastructure to support IPR-related matters is insufficient in Nepal. The country's intellectual property office is under-resourced and its officials lack adequate training to handle complex IPR issues. This lack of capacity makes it difficult to process IPR applications efficiently and enforce existing laws effectively.
4. **High Incidence of Counterfeiting:** The market in Nepal is flooded with counterfeit goods, including electronics, clothing, pharmaceuticals and food products. These goods not only undermine consumer confidence but also harm the local economy by creating unfair competition for genuine businesses.
5. **Local Product Infringements:** Nepalese local products, such as **Gundruk**, **Lapsi** and **Chyang**, have been exploited by foreign companies without proper protection under IPR laws. For instance, **Gundruk**, a fermented vegetable product, is patented as **Kimchi** in Korea, while **Chyang**, a traditional barley-based alcoholic beverage, is sold by a Korean company under the same name. These examples illustrate the failure of Nepal to protect its own indigenous knowledge and traditional products.

The Rise of Counterfeit Products in Nepal

Counterfeit goods have become a growing concern in Nepal, with local markets flooded by fake versions of popular products. For instance, Golden Oak, a widely consumed Nepalese whiskey, has faced numerous cases of trademark infringement. Unauthorized entities replicate its branding and sell inferior-quality alcohol under its name, misleading consumers and damaging the brand's reputation. Similarly, food products like Wai Wai noodles and Current noodles, which are household staples, have been targets of intellectual property theft. Counterfeit versions of these products not only pose health risks but also undermine the trust consumers place in legitimate brands. These violations highlight the urgent need for stricter enforcement of IPR laws to protect both businesses and consumers.

Piracy in the Creative Industry: The Case of *Aktor One Take*

The creative industry in Nepal is another sector heavily affected by IPR violations. The recent release of the film *Aktor One Take* brought attention to the widespread issue of piracy. Within days of its theatrical release, pirated copies of the film began circulating online and in local markets, depriving the creators of rightful revenue.

This trend is not unique to *Aktor One Take*; many Nepalese filmmakers face similar challenges, as unauthorized distribution and illegal streaming platforms thrive due to weak enforcement of copyright laws. Such violations discourage creativity and innovation, as artists and producers struggle to sustain themselves financially in an environment where their work is undervalued and exploited. The film faced a temporary halt in screening due to allegations of copyright infringement. The District Court of Kathmandu issued an order to halt the film's release, citing concerns over unauthorized use of the title and storyline. This incident underscores the need for robust IPR enforcement mechanisms within the entertainment sector.

Real-Life Examples of IPR Violations in Nepal

Several instances highlight the challenges Nepal faces in protecting intellectual property:

1. **Trademark Infringements:** A notable case involves the **Nirma** logo, a well-known brand in India. A Nepali business registered a logo almost identical to Nirma's, preventing the company from obtaining registration for its brand. Other examples include products like **Kurkure**, which have been imitated by local companies under different names and beverages such as **Club Cola**, which are sold under names resembling **Coca Cola**.
2. **Counterfeit Products:** The market is inundated with counterfeit products, including fake pharmaceuticals, electronic goods and food items. These counterfeit goods not only harm consumers but also jeopardize the integrity of the business environment by creating unfair competition for legitimate companies.
3. **Indigenous Knowledge and Cultural Expression:** Nepal has failed to protect many of its indigenous products and cultural expressions, such as **Gundruk** and **Lapsi**, which have been registered and patented by foreign entities. This failure highlights the lack of adequate legal protection for traditional knowledge and the exploitation of local resources by foreign corporations.

Institutional Weaknesses and Cultural Disconnects

Nepal's IPR enforcement mechanisms are crippled by structural inefficiencies and corruption. The Department of Industry, responsible for trademark registration, has repeatedly approved blatant infringements, such as *Himgiri* mimicking India's *Nirma* detergent, despite identical logos and packaging. This reflects a lack of technical expertise and accountability, with officials often prioritizing expediency over due diligence (Shrestha, *Nepali Times*, 2021). Similarly, the Patent, Design and Trademark Act (1965), drafted over 50 years ago, lacks provisions for digital piracy or biopiracy, leaving gaps exploited by foreign entities. For example, South Korean companies have patented *chyang*, a traditional Nepali barley alcohol, while Japan's *sunki* and Korea's *kimchi*—both analogous to Nepal's *gundruk*—receive legal protection denied to their Nepali counterparts (WIPO, 2023).

The National Intellectual Property Policy (2017) ambitiously aims to modernize IPR governance but remains unimplemented due to bureaucratic inertia and budget constraints. A 2020 World Bank report noted that Nepal allocates less than 0.5% of its national budget to IPR institutions, resulting in outdated infrastructure and undertrained staff. Furthermore, the Copyright Act (2002) fails to address digital copyright violations, enabling rampant piracy of Nepali films and music. For instance, *Kabaddi Kabaddi*, a hit Nepali movie, lost an estimated \$2 million in revenue due to illegal streaming platforms (Film Development Board, Nepal, 2022).

Cultural attitudes further undermine IPR relevance. Traditional knowledge, such as Ayurvedic remedies or *thangka* painting techniques, is rarely patented, viewed as communal heritage rather than individual property. A 2021 study by the Nepal Indigenous Knowledge Foundation found that 78% of traditional healers oppose patenting practices, fearing corporate exploitation. This contrasts sharply with India's Traditional Knowledge Digital Library, which documents indigenous practices to block foreign patents—a model Nepal has yet to adopt (UNDP, 2022).

Access vs. Exclusivity

Nepal's developmental imperatives often clash with IPR's exclusivity-driven model. In healthcare, TRIPS-mandated patent protections have inflated medicine prices, exacerbating Nepal's public health crises. For example, diabetes drug *Insulin Glargine* costs 300% more in Nepal than in India due to patent monopolies, despite 25% of Nepalis living below the poverty line (Health Ministry, Nepal, 2023). While TRIPS allows compulsory licensing for emergencies, Nepal's bureaucratic hurdles deter its use—unlike India, which issued licenses for HIV drugs in the 2000s.

Agriculture, the livelihood of 65% of Nepalis, faces similar challenges. Hybrid seeds patented by multinationals like Syngenta are often unaffordable, forcing farmers to rely on unregulated, low-quality alternatives. A 2022 FAO report linked IPR-driven seed monopolies to declining crop diversity in Nepal's Terai region, where rice yields fell by 15% due to non-resilient hybrids. Conversely, Nepal's *Lapsi* fruit, rich in vitamin C and endemic to the Himalayas, remains unprotected, allowing foreign firms to patent derived products like jams and supplements (ICIMOD, 2021).

Grassroots innovators, such as those developing solar dryers for *gundruk* preservation, face IPR registration costs exceeding 1,000 prohibitive in a country with a per capita income of 1,400 (World Bank, 2023). This deters local innovation while favoring foreign entities with financial and legal resources.

Structural and Socio-Economic Barriers

- **Geographic and Institutional Fragmentation:** Nepal's IPR offices are centralized in Kathmandu, inaccessible to rural innovators. A 2022 UNDP report noted that 85% of patent applications come from urban areas, despite villages hosting traditional knowledge holders.
- **Awareness Gaps:** In remote districts like Humla, artisans producing *radi* (woolen blankets) and *dhaka* (traditional fabric) remain unaware of geographical indication (GI) tags. India's GI success with Darjeeling tea contrasts sharply with Nepal's failure to protect *dhaka*, despite its cultural significance.
- **Resource Constraints:** The Patent, Design and Trademark Office (PDTO) operates on a budget of just \$200,000 annually, limiting its capacity to process applications or conduct raids (World Bank, 2023). Comparatively, Sri Lanka spends 10 times more on IPR enforcement.
- **Political Neglect:** IPR is rarely prioritized in policymaking. For example, Nepal's 2023 budget allocated \$0 to awareness campaigns in rural areas, despite 70% of the population relying on agriculture and handicrafts (National Planning Commission, 2023).
- **International Pressure vs. Local Realities:** While the U.S. Trade Representative (USTR) pushes for stricter IPR laws through the TIFA framework, Nepali NGOs argue this undermines access to seeds and medicines. For instance, U.S.-backed data exclusivity clauses could delay generic drug production, affecting rural healthcare (Health Right International, 2023).

The Impact of IPR Violations on Marginalized Communities

IPR violations disproportionately affect marginalized communities in Nepal, particularly those in rural and remote areas. For example, farmers who rely on indigenous crops often see their innovations co-opted by larger corporations without fair compensation. Similarly, artisans and craftspeople who create traditional designs find their work replicated and sold without permission, undermining their livelihoods. These violations not only stifle innovation but also deepen economic disparities, as marginalized groups are left without the means to protect their intellectual contributions.

Moreover, the prevalence of counterfeit goods in rural markets poses significant health and safety risks. Inferior-quality products, such as fake alcohol or adulterated food items, can have severe consequences for consumers who lack the means to verify the authenticity of what they purchase. This underscores the urgent need for stronger enforcement mechanisms and greater awareness campaigns to educate rural populations about the dangers of counterfeit goods and the importance of intellectual property rights.

Enforcement of Intellectual Property Rights

Enforcement of IPR is crucial to ensuring that creators and innovators receive the protection they deserve. The **TRIPS Agreement** provides detailed provisions on the enforcement of IPR, which include civil, administrative and criminal procedures. Under the TRIPS framework, members are obligated to introduce measures for the enforcement of intellectual property rights, such as **border enforcement** for counterfeited goods, criminal penalties for willful infringement and remedies for damages and recovery of profits.

In Nepal's context, the government must strengthen IPR enforcement through a combination of measures, including:

1. **Civil and Administrative Procedures:** Strengthening the legal system to provide quick and efficient remedies for IPR infringements, including damages for lost revenue and preventive measures to stop further infringements.
2. **Criminal Penalties:** Implementing stringent penalties for intellectual property infringement, including imprisonment and fines for willful counterfeiting and piracy on a commercial scale.
3. **Public Education and Training:** Enhancing public education and training programs for businesses, officials and consumers to raise awareness about IPR and its enforcement.
4. **Improving Institutional Capacity:** Increasing the capacity of the Department of Industry and other relevant agencies to handle IPR issues effectively, ensuring that the enforcement system is equipped with the necessary resources and expertise.

Proposed Reforms and Initiatives

To address these issues, Nepal is considering several reforms and initiatives:

1. **Establishing an Intellectual Property Police:** The draft **Copyright Act, 2024** proposes the establishment of an Intellectual Property Police force that would be responsible for conducting raids and investigations into IPR violations, thus ensuring better enforcement of IPR laws.

2. **Digitizing IPR Records:** The Department of Industry has initiated the process of digitizing old IPR records to improve efficiency and accessibility. This move is expected to streamline the application process for patents, trademarks and copyrights, making it easier for individuals and businesses to register and protect their intellectual property.
3. **Public Awareness Campaigns:** Government initiatives are being launched to educate the public about the importance of IPR, the potential economic benefits of protecting intellectual property and the risks associated with counterfeiting and piracy. These campaigns aim to raise awareness among businesses and consumers alike about the importance of IPR in fostering a fair and competitive market environment.

The limited scope of IPR enforcement in Nepal can be attributed to several factors. First, there is a lack of awareness about intellectual property rights, especially in rural and remote areas. Many communities in these regions depend on agriculture and natural resources and their traditional knowledge is often exploited without proper acknowledgment or compensation. For example, indigenous crops and plant-based innovations are frequently misused by external entities, leaving local innovators without legal recourse.

Second, the legal framework governing IPR in Nepal is outdated and insufficient. While laws such as the Copyright Act 2002 and the Patent, Design and Trademark Act 1965 exist, their implementation is weak. The Department of Industry has recorded around 900 offenses related to trademark violations since mid-2020, yet most cases go unresolved due to inadequate enforcement mechanisms. This lack of accountability emboldens violators and perpetuates a culture of impunity.

Finally, the limited reach of IPR education and advocacy programs exacerbates the problem. In rural areas, where access to information is already restricted, communities remain unaware of their rights and the importance of protecting intellectual property. As a result, they are more vulnerable to exploitation, whether through counterfeit goods, misuse of traditional knowledge, or unauthorized use of creative works

Divergent Perspectives on IPR's Role

- **Government View:** Officials claim IPR modernization is “progressing,” citing the 2023 draft of the Industrial Property Act, which introduces GI protections. Critics, however, argue the draft ignores traditional knowledge and focuses on urban industries.
- **Rural Communities:** Indigenous groups like the Tharu oppose IPR commodification of their cultural symbols (e.g., *peacock dance* rituals). They advocate for collective rights, as seen in Ecuador’s “Buen Vivir” model, which prioritizes community over individual ownership.
- **International NGOs:** Organizations like Oxfam urge Nepal to use TRIPS flexibilities, such as compulsory licensing for COVID-19 vaccines, but face pushback from pharmaceutical lobbies.

Global Perspectives and Divergent Agendas

The IPR debate in Nepal mirrors broader global inequities. Developed nations and multinational corporations (MNCs) advocate stringent IPR enforcement through bilateral treaties, such as the U.S.-Nepal Trade and Investment Framework Agreement (TIFA), which pressures Nepal to adopt “TRIPS-plus” measures. For instance, the U.S. Pharmaceutical Research and Manufacturers of America (PhRMA) has lobbied for data exclusivity clauses that would delay generic drug production—a move opposed by Nepali NGOs like Health Right International (HRI, 2022).

Conversely, developing nations and civil society groups argue for “IPR flexibilities.” The 2001 Doha Declaration affirmed countries’ rights to prioritize public health over patents, a stance echoed by Nepal’s 2022 proposal to extend its LDC status under TRIPS until 2033 to delay pharmaceutical patent compliance. However, such efforts face resistance from industrialized blocs. For example, the EU’s 2021 Intellectual Property Action Plan pressures developing countries to criminalize IPR infringements, threatening trade sanctions for non-compliance (South Centre, 2022).

Indigenous rights organizations, such as the Nepal Federation of Indigenous Nationalities (NEFIN), advocate for *sui generis* IPR models that protect traditional knowledge without commodifying it. They cite Bolivia’s 2017 Law of Mother Earth, which grants legal personhood to natural and cultural heritage, as a potential blueprint (NEFIN, 2023).

Conclusion

Nepal’s IPR sector remains limited due to systemic inequities, urban-centric policies and global pressures that sideline rural and traditional knowledge systems. Addressing these gaps requires decentralizing IPR services, launching grassroots awareness programs and integrating *sui generis* models for traditional knowledge. Without such reforms, IPR will continue to benefit urban elites and foreign entities, leaving Nepal’s villages and their innovations in the shadows. In conclusion, intellectual property rights play a critical role in fostering innovation and economic development, yet their effective enforcement remains a challenge in Nepal. While Nepal has made efforts to strengthen its IPR legal framework, issues such as weak enforcement, lack of awareness and inadequate infrastructure continue to hinder the country's ability to fully capitalize on the benefits of IPR. For Nepal to thrive in the global economy and protect its indigenous knowledge and resources, the government must prioritize reforms that address these issues, enhance public awareness and strengthen the enforcement of intellectual property laws. By doing so, Nepal can create a more competitive and innovation-driven environment that benefits both local businesses and the economy at large. Nepal’s experience underscores that IPR relevance in developing countries hinges on balancing global standards with local realities. Rather than dismissing IPR as irrelevant, Nepal must leverage

international flexibilities like TRIPS' public health safeguards and invest in institutional capacity. For instance, establishing a Traditional Knowledge Digital Library, as India did, could protect indigenous practices from biopiracy. Similarly, revising the Patent Act to prioritize affordable medicines and climate-resilient seeds would align IPR with national priorities.

International actors, including WIPO and the UN, must support Nepal through technology transfer and funding, as outlined in SDG 17. Meanwhile, bilateral donors should avoid pressuring Nepal into "TRIPS-plus" agreements that undermine equitable development. By reimagining IPR as a tool for inclusive growth rather than a one-size-fits-all mandate Nepal can harness innovation while safeguarding its cultural and socio-economic fabric.

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