ROBSAN SOLOMON URGESSA> (JIFE)

1. Introduction to the basic concepts of the intellectual property law

Intellectual property is one categories of property, which needs serious protection from the laws of the country. When we consider the property as a thing, we are equating the part with the whole. Equating a part with the whole means, something inexplicable or in other words, part can never be equal with the whole. Things or objects are just one components of a property concept which also includes various other dimensions. Basically, the concept of property has five dimensions; these are

A. One of the dimensions of property is that, there is what is called the right bearer; /we call this the subject of the property. This subject of the property is an entity or person physical or juridical. This subject of property is expected to exercise the right over the specified property. For example, if somebody has his own phone he himself will be the bearer of the right over his phone.

B. the object; it means, the thing or the object over which the right is going to be exercised. Generally speaking this phenomenon is regarded as an object or a physical thing. This could be a physical thing which is self defined, it can also be a legal thing over which property right would not be there unless there is some kind of legal definition. For instance, Mr. Oliad can move around caring his sale phone in his pocket this is a pretty self defined so no problem with this definition, because Mr. Oliad exercise his right over the phone by controlling it or by taking possession of it. But this self definition would not be true in respect of some other kinds of objects, for example, incorporeal objects of property including intellectual property because of this fact the exercise of right over this property requires a precise legal definition. We come back to this concept later on but now it would be better if we understand the thing or the object over which the

property right is exercised as either a self defined-physical thing or legal thing. By legal thing we mean, something which is not out there or which is not self defined-but defined as an object of property by the law itself.

C. the third dimension is the sovereign right accorded to the subject over the object. There is the bundle of sovereign right, accorded to the subject over the object. Ownership right is one of these bundles of right;-this sovereign right is basically understood as a monopoly right-or an exclusive right over the thing. Mr. B. has a sovereign right over a certain thing means that he has the right to use the thing and he can do whatever he wants with his thing to the exclusion of anybody-else in the world. This is so why, the thing under discussion belongs to Mr. B. exclusively; therefore, nobody is entitled-to interfere with his right.

D. The fourth dimension is the fact that often the right to property is an exclusive right but not an absolute right. This is to mean, there are often limitations-or there are spheres beyond which the right cannot-go. This limitation could be imposed because of social policy and limitation based on concerns for the rights of the others. So, there is the regime of the limitation in the concepts of property. These limitations are more pronounced in respect of-legally defined objects of property than in respect of self defined objects of property. The term self defined object of property is used for explaining the tangible or-perceptible object. This perception however, could be through the use of our five sense organs.

E. the fifth or the final dimensions of the term property is the existence of grounds for bestowing what is basically a semi/sovereign.-We dare-to reduce the right to semi/sovereign because of the operation of the rules of limitation. The principles of limitation would reduce what we explained as a sovereign to semi/sovereign right. So, there are grounds for bestowing the semi/sovereign right upon the subject in respect of the objects of property. We call this category as the justifications. Why do you think the land is not

subjected to ownership right under Ethiopian law? It has its own justification, of course-there would be explanation behind any law, but in respect of property law the justification is very common and assumed to be a mandatory. So, whenever a certain object is defined as an object of property and whenever, the rights are defined in respect of that object for the subject, there would be justification. Natural right theory and utilitarian based theory are for example the justification for the law of the intellectual property. As a result, the concept of property as a whole is not an object or a thing rather, a thing could be one components of the whole therefore we shouldn't equate a part with the whole. Broadly speaking, the concept of property includes all the steps such as the subject, object, rights, limitations-and justification.

There are classifications of things or goods, the Ethiopian civil code calls them as a goods not as a thing, it looks like that a thing is very broader concept than a good;-goods are often understood as something of economic value, while thing includes an object which may not have an economic value. But still held by the subject and therefore, deserves protection under law of property. For instance, if somebody inherited-the Sword from his/her grandfather-which has been used in a war like that of Adowa, in which his/her grandfather has won. This inherited property might have immense moral value that is to be memorized-than economic value it would have. This could be regarded as an object of property not because of it could be marketed as such, but it is regarded as a property for the reasons of your attaching for its spiritual value.

Accordingly, things or goods might be classified as corporeal or incorporeal goods or things. **Corporeal things means**, the object in respect of which rights of property are exercised and are basically perceptible with the use of sense organs. However, this does not necessarily-mean that the thing must be perceived through the use of our all sense organ, it will be enough if it is perceptible by one of our sense organ. Things do not indicate the

object under our control only it also covers uncontrolled things such as sun, moon and stars. Such kinds of things are generally regarded as universal things, because nobody has legal claim over them. So, such things are categorized as corporeal thing because they are perceptible through our sense organ at least by one of our sense organ. But some of this corporeal categories might fall beyond private property law, as we said above things like sun, moon, stars and air are commonly beyond private control and they are available to mankind. We can also think of a thing that can be controlled by human being but made beyond human control by law, things like highways could be regarded as a good example for this scenario.

Incorporeal things; incorporeal things are imperceptible by senses. You may conceive them through the use of mind but cannot be perceived by sense. Corporeal things are basically appropriable but the concept of physical appropriability does not work in light of incorporeal things. So, the conventional law of appropriation or occupancy does not apply here. The mere occupation of the corporeal things or goods may result in exercising the right of possessing or owning. One may ask that if incorporeal things are in-appropriable how one can be the beneficiary of such things with due course of protection? As a result, the existence of the law which regulates such kinds of incorporeal property would be very necessary condition-to come out of this dilemma-because if law exists in such circumstances it serves as a ground for claiming ownership right or compensation of damage if any.

In short, the existence of the law redefines-occupancy-or conventional appropriation to fit the context of incorporeal property right. So, one can still retain property right with the help of the law in the cases of incorporeal property-specially by taking legal action against whoever go against his/her recognized right.

Not all incorporeal rights are property right, tort right and contractual rights are incorporeal right but not property right because both of them are right in personem not right in rem. So, they are not regarded as property right. Hence, not all intangible or incorporeal rights are property right because-to be regarded as property right it must be right in rem.

2. Intellectual property law

What is intellectual property law?

Intellectual property law is the section of the law which deals with the creation of the mind or more technically, it is the law which regulates the works of human intellect. Hence, intellectual property means, the legal property which is the result of the works of human mind in the field of industry, scientific invention and artistic fields. Intellectual property is regarded as incorporeal property which everybody conceives by his mind, so, they are not perceptible through our senses. Intellectual property rights are legal entitlements governing information or knowledge as a product of human creativity which may take the form of copyright, patents, trademarks, etc. fundamental differences exist between rights in tangible property and IPRS. First, an intellectual property right is intangible, that is, it cannot be defined or identified by its own physical parameters. It must be expressed in some discernible way to be the subject of protection. Second, information or knowledge is fundamentally different from tangible property in that it is the use or reproduction by one does not deprive others (including the right to holder) of the use information or knowledge. In economic parlance, this aspect of intellectual property right is known as the “non-rivalries nature of information or knowledge” and constitutes the most important difference between rights in tangible goods and those in information or knowledge. Third, unlike right in intangible property, IPRs may be afforded different considerations based on public policy rather than as a fundamental property right.

The term intellectual indicates that the product is the result of human mind or the fruits of human intellect. Among such products creations, inventions, ideas, the way an idea is expressed;-reputation-i.e. the attraction between the producer and the consumer could be seen as a huge property-which may be symbolized by trademarks and geographical indications of the origin. Generally speaking, such kinds of property are not materially existent but may be conceived by mind and are the significant property for the interested person. Intellectual property law is about exclusive right or sovereign right which are accorded to the person or to the creator of the property, in respect of his/her creation.

Natures-or features of intellectual property; some of this features are general in the sense that they are also shared by other kinds of property right, however, there are also some features which is unique to intellectual property right. Accordingly, it would be better if we discuss the general features of intellectual property right which the other property also shares; and unique features respectively;

The first-feature's of intellectual property right is intangibility;

Second, mobility, the mobility features is ascribed to intellectual property rights not because they are naturally movables as corporeal objects/of property but because the law wants it to be. The justification for this may be, movable object of property, has an advantage of easing-in economic transaction. Not all intangible-or incorporeal property rights are intellectual property right, it means, there are some incorporeal property rights which are not intellectual property rights. For example, shares in a company, share in the business organization while this organization is in operation; but-when it dissolves, it is no more incorporeal,-the share we have in business organization as a going concern is an incorporeal property right but it is not an intellectual property right. Second, the business itself. If you see article 124 of the commercial code of Ethiopia it tries to define the term

business, under this article the term business has been defined as a property having the features of incorporeal movable property right.

The third feature is an economic value. For corporeal things economic value is not as such necessary, Mr. Murado-abdo has written that, it is not necessary that a good should have an economic value to be property at law. The good may be invaluable or-may have negligible value for worthiness-in economic terms. The object from the view point of private property law, could just have a spiritual value, it could have historical or cultural value. But when it comes to incorporeal objects of property this will not be in a case, actually, this is not a settled issue but the general tendency is intellectual property rights are specially expected to have or must have-economic value. There is also the concept of moral right in intellectual property,

Fourth, the fourth features are the existence of joint right, matrimonial right, communal right and public domain. When two or more persons exercise their right jointly it is to be called a joint right. For example, a. and b. can agree to buy car with one another to own it jointly. The above scenario may also work in respect of intellectual property, I.e. a. and b. can write a book together. Matrimonial rights are the rights which have inherent-connection with the property of the spouses. Accordingly, if husband or wife wrote a certain book after he/she validly concluded a marriage the right gained from the written document will be accorded to both of them. However, it has to be noted that, what would be the common right for both husband and wife is not the moral right derived from the written book rather it is the economic value which is going to be the common right for both husband and wife. The society can also use certain property by being in communal structure-for instance; the farmers have traditional knowledge through which they can preserve the biodiversity. So, the concept of communal right is not only applicable for corporeal property right it can also be among one characteristics of incorporeal property right

especially intellectual property right. Finally, public domain means, a property designed for all without any distinction. NOTE; joint rights, communal rights and matrimonial rights are the manifestations of private property law I.e. if certain property belongs to particular community it means that, no other community is allowed to use the specified property.-However, in the case of public domain there are no such kinds of exclusion, anybody can use it freely. Therefore, intellectual property can also be public domain because of certain facts. As it is well known the exercise of intellectual property right is limited by duration of time. When that time expires the right would be entitled to the public at large. To take one working example, the work of Adolf-hitlar in respect of meinkamph (my history) will expires at the thirty first of 20015 G.c. so, the copy right in respect of this book is going to be the public domain.-Upto this day the publication of this book was controlled by the Bavarian council because of its dangerous social message,-but starting from thirty first of December 20015 the Bavarian council would no longer exercise its right with regard to this special book of the world. As a result, the concept of public domain equally applies in respect of intellectual property right jest in the manner it applies to other property rights.

The specific or unique features of intellectual property rights;

1. The features of territoriality; in the absence of a treaty region, intellectual property rights are definitely territorial;-they are protected-within a certain country under the laws of that country. Under property law we have one very crucial concept which is known as the concepts of sites; /sites normally make sense in respect of corporeal property object. The principle of sites envisages that the law of the place where the object is situated will have application when dispute comes in to picture with regard to specific object of property. The concept of sites does not apply in respect of incorporeal property interests;-because incorporeal property interests are not capable of possession or they are not

materially exist. For instance, if A. has intellectual property right in Ethiopia A. can't claim such right in other countries like Kenya and Tanzania because; intellectual property right is normally enforced in a country where we have obtained the claimed right. This tells the territoriality of intellectual property right. Therefore, intellectual property right is equated as formal independence plus territorial limitation.

2. The concept of dichotomy;-the dichotomy between knowledge or information and the object in which it is contained. Knowledge or information versus object dichotomy, i.e. the music and the disk in which the music is contained. Does the fact that you owned the CD will entitle you to own the song as well? Obviously the answer will be no. because; the two are different from each other. Even though, objects of intellectual property rights in this case knowledge and information are stored in physical objects the property law that applies to the two objects are quite different. The exercise of property right in respect of physical objects (CD) is governed by the conventional law of property. But, acquisition, ownership and enforcement in respect of the song and the information-stored in that CD are basically protected under the law of intellectual property. Generally speaking, the ownership of the CD does not entitle you to own the song. This is all about what the dichotomy is. Another issue that must be given due attention in relation to dichotomy is the dichotomy between an object of intellectual property right and physical embodiment of that object of intellectual property right. Love songs and love, Good will and their friendship and celebrity identity and personality. Can you think of a dichotomy in respect of these things? Think of the physical embodiment of the object of intellectual property-as a human being himself-rather than other physical object. With regard to this point, you can't have any right over love but you can have right over the love-sense. You may exercise a right over the good will but you can't exercise a right over the friendship

There is also another concept which is much similar to this scenario;-this concept is what we call non-rivalries feature's, this concept is all about originality of the work at any time and in any situation. The fact that one million people consumed the same work at the same time does not affect its quality or originality. With regard to the physical objects of property, the consumption is rivalry; if Mr. A. occupied certain chair by sitting on it, nobody can sit on that chair simultaneously. Knowledge and information's are commonly characterized by being none/rivalries-consumption; everybody can share it without reducing the amount available to previous users. Here the question is if subsequent users do not-cause any kind of reduction in quality or amount to the previous users why we make it exclusive-right?-The possible justification to this fact could be the moral fates of the original user and the investment he invested on it. And more technically, there are some sorts of risks which the original user could assume; this risk could-be the risks in terms of expense, wastage of time and investing energy.

3. The concept of fragmentation;-It could also be pronounced as the concept of divisibility. In the field of intellectual property the work may be fragmented or might have the characteristics of divisibility, for instance, when one write a book the process of writing the book passes through different collective works like editing and publishing the book so, both the editor and publisher have the respective right with regard to the book as the writer of the book does. As a result, under intellectual property, what is basically single subject matter can be fragmented so that many people can enjoy their own exclusive right without interfering with the rights of the other.

4. Finally, the other unique features of intellectual property right is the issue of duration; the life span of intellectual property is much limited than any other kinds of property right.

3. The domains of intellectual property right;

Our cerebral cortex-has two main parts, this two parts are-the right part and the left part. The right part deals with emotions-and feeling, so it is expected to generate the art. The left part, deals with inventions, ideas and logic-and it generate the object which will be protected under the subject matter. This is the result of conceiving intellectual property right as predominantly occupied by these two items. The domain of intellectual property right is occupied by copy right on one hand and industrial property right on the other hand.

What are the subject matters for copy right protection?

Strictly speaking,-modes of expressions in the fields of literature and arts are regarded as the focusing area of copyright protection. It is not the idea expressed, that is the subject matter-for-the copy right protection, it is the manner of expression which is the subject-matter of copy right protection. Ideas are so important to be exclusively controlled; however, copyright regime-does-not protects ideas rather, it protects-the manner in which the ideas are expressed. So, ideas are fewer than their manner of expression, with regard to the industrial property right, we can have patent right. Patent protect ideas but there are certain criteria to be fulfilled when we give monopoly over the ideas of the inventors,-among such criteria it must be novel, it must be non-obvious-and it must be industrially applicable. Unless, all of these requirements-have been mate,-granting of a monopoly over an idea will not be effective. One may ask why the law imposes such kinds of requirement in respect of patents; the main reason is monopoly over an idea in the eyes of society is less acceptable.

So, patent protects ideas as opposed to copyright which protect the manners of expressing the ideas/and this idea is often considered as an invention (a technological invention). Broadly speaking, we can think of

three different kinds of patents these are utility patent, design patent and plant patents.

Utility patents are given-to the functional inventions of an individual or groups of an individual. This types of patent right is considered to be the normal patents, because it tries to solve the existing societal problems. When we see design patent, in some countries it is considered as industrial design and get due protection, design patent is a kind of patent which is granted for industrially applicable configurations or products. Example, product shape, and finally, plant patents, this is very important in countries like Ethiopia where agriculture is the means of economic system. If we see the concepts of patent in context of Ethiopia; there is normal patent, utility-model, industrial design and plant breeding right. Again, under industrial property right we have trademarks, trademarks protects good will or brand associated with certain goods or services. Under Ethiopian law we do not have a clear idea which differentiate trade name and trademarks, however, some regimes also protects trade names as one object of intellectual property. In other ways, there is also another component which is called as trade secret. The main reasons for which the intellectual property is given a protection is because of disclosure, a patent right is granted over an inventions for a disclosed technical information, apart from this, intellectual property right is granted over a trade mark for a glarier-which is already used in the marketing of goods and services. As to the trade secret there are no such kinds of features, in this case it is very difficult to provide adequate public policy justifications. but to the contrary, some countries have given protection for trade secret or for the rights which are undisclosed to the public at large like for example Coca-Cola trade secret right in U.S.A.in short, the protection of trade mark presupposes two important features, 1. The secret must be absolutely maintained, this means the firm which controls the secret-must be big enough. 2. It must be commercially valuable

The last component is geographical indication of the origin;-it shows the origin of good and-services. It is the name of an area, a designation or a name that is used in the courses of business to identify the geographic origin of goods or services. But the goods have some reputation, quality or characteristics that are essentially due to physical conditions like soil and weather-condition which is not available anywhere else/or the human factors available in that specific area, the word-champagne is the direct manifestation-of this-fact it is the sparkling wine produced in France. Champagne is protected under the concepts of geographical origin of the goods because, that sparkling quality is due to the traditional knowledge of the community-residing in the southern France. Therefore,-the reputation behind champagne is essentially, due to that traditional human factors. Accordingly, such kinds of specific facts i.e. geographical conditions or human factors are recognized to be very important under intellectual property. With regard to the physical conditions we can take for example, Ethiopian coffee, why most Ethiopian coffee customers prefer Ethiopian coffee?-It is for the reasons/of the climate and soil in which it is produced. So, the quality, reputation and characteristic associated with Ethiopian coffee are mainly due to its geographical origin or in some cases the way it is produced might also be regarded as contributing factors-for the above facts.

There are certain common areas-that trademarks and geographic indication shares, we will make clear this areas under chapter three of this book. But for now, we have to take note that, a geographical indication regime is a designation or a name that protects a good will, reputation associated with the geographical origin of the goods.

4. Justifications for the protection of intellectual property right

There are three broad theoretical bases for the protections of intellectual property right. These are personality based theory, Lockean or labor theory

and utility based theory or utilitarianism. Why we bother to protect intellectual property rights?-The answer for the above question will be gathered from these three theoretical justifications.

Personality based theory asserts that things of intellectual property rights are extinctions-of individual self actualization, for the realizations of individuals-self actualization, intellectual property right is very important. The Lockean or labor theory has its foundation under the works of john lock; he was the-British political philosopher who said if you mix your physical labor or intellectual labor with certain objects then you are entitled to control what you have produced from your labor. According to john lock, everybody-has a right to be protected under the law if he produced certain things through the mechanism-of physical labor or intellectual labor. Furthermore, he says, the law must accord such person not only economic right over the specified things but also it must accord him with the-right of moral claims if necessary.

The third theoretical justification for the protection of intellectual property right is a theory of utilitarianism. Utilitarianism bothers about providing adequate incentive/regimes-for generating maximal amount of intellectual works that benefits the society in the long run.

In addition to these three Theoretical justifications there are also basic critiques-set for the above three theoretical justifications-or argument for and against. The first two are basically natural right approach to the intellectual property; they are based on a natural right approach to intellectual property. They bases there justifications on the basis of moral philosophy. As a result, the above two theoretical justifications alleges that individuals have moral claims to intellectual property, however, their premises are different from each other they also differ from one another in their purpose which they design to attain-from the protection. To put the

above three theoretical justifications in precise and technical order it would be better to treat them separately, so, let see them in separate manner.

a. The Personality based justifications and its critiques

This theory is a kind of European rather than Anglo/American traditions, the continental European traditions subscribes to this theory. The theorists are moral philosophers like Emanuel Kant and-Frederick-Hegel. These two personalities are from German schools of moral philosophy, the supporters of this theoretical-justification of intellectual property rights, strongly argues that-regardless of other extraneous-factors the products of human intellect must be regarded as property and must be given much attention for its protection. Regardless of whether the protection provides some benefits to the society at large in and off it self-intellectual property rights deserves-some kinds of protections because, it is a natural right. This is what the European tradition of intellectual property right generally subscribes to, according to the personality based theorists; individuals have moral claims to their own talents and experience's.

The personality based theorists-commonly shares the idea of importance of this right for self actualization, self actualization means, reaching the stage where we dreams to reach in our whole life. However, it has to be noted that, for those-theorists self actualization by itself is not enough rather it can be the initial point for the designed plans; therefore, you need to have external self actualization. To be successful for the future or to reach on what we dreams we do not have to limit our selves only by our internal self actualization, by and large, they suggests personality must be expanded-beyond our own internal pressures. In order to realize our external self actualization we should have property right but to have such kinds of right we must mix our feeling, talents and experiences which are in us with tangible or intangible objects. After doing so, we will gain moral claims to control those objects-and thereby expands our personality to those objects.

Our moral claim to the objects with which our feelings, experiences and talents are mixed with,-are secured through the regime of property right-because , property right enable us to have that control-over the objects which could be tangible or intangible with which our internal acts has been mixed. According to personality based theorists, if we do not have control over such objects the concept of self actualization will not be realized in its full sense.

The Critiques- among the arguments against this theoretical justification, the first one advocates that,-it is not clear that we own our feelings or our experiences, this critiques doesn't-deny that they are inside us but they argue this doesn't necessarily mean that we own them for the very reasons of their internality. The mere fact that these feelings are found inside us does not mean that there is a moral claim to own them.

The second critiques criticizes the personality based theory by envisaging even if we say that we could own these feelings or talents but it does not automatically follow that the personality or the claim is expanded when our personalities are mixed with tangible or intangible objects. Furthermore, the supporters of this critiques asserts that, rather than claiming property right to these tangible and intangible objects it would be better if we regard them as an abandonment of our personality, for example, if someone goes to the house of hair and asks to be cut his hair he is In fact,-abandoning his personality and also cutting the nails has the same line of thought. So, according to this critique's-mixing our feelings, experiences and talents with tangible or intangible objects could be viewed in the same line of argument.

The third critiques raises its line of argument-by further extending the second lines of arguments, they argues by saying even if we could say that our personality is expanded to tangible or intangible objects we would still face with strong arguments for establishing property right. The mere fact

that, our personality expands to tangible or intangible objects that have been mixed with our internal feelings does not automatically mean that we gain property right, property rights are monopoly right so to have such kinds of right we need to have strong lines of argument but the personality theorists did not provide these kinds of argument. In addition to the above-point of critiques this third group of critiques provides the line of argument in such a way that, personality based moral claims may not warrant more than some protections rather than according it with the full-fledged property right.

Finally, the fourth critiques says, there are many intellectual innovations/in which the authors or the innovator's personality is not reflected at all. Many products of the intellect may be characterized as having no reflections of the inventor's personality as such, like for example, patentable products. So, given these all challenges the personality based justification for the protections of intellectual property would be inadequate to be an acceptable justification for intellectual property right.

The rejoinder-Take note of the following history, suppose that Mr. A buys a painting at a garage-sale. Which was produced by Mr. B. A, takes the painting to his home and alters the painting with the marker and draws horns-and-mustachios-on the figures in the painting. The addition was so clever and fits so nicely-in to the painting that A hangs it in a window to the directions of busy street. There are at least two ethical worries to be considered in this case, the first one is the alteration by A, may cause unjustified economic damage to B. second, and independent of economic considerations, Mr. A's. Action may damage Mr. B's reputation. The integrity of the painting has been violated-without the consents of the author. This action could pose to Mr. B. the long term damage with in a society in terms of economic consideration. If this claim is sensible, it means that we are acknowledging personality based moral strength attaching to certain intellectual works. By producing intellectual works, authors and

inventors put themselves on display and incur certain privileges; intellectual property rights afford the authors and the inventors some sorts of major control over this risk.

b. The Lockean or Labor Theory

The labor theories begin with the claim that individuals are entitled to control-the fruits of their labor, property rights are generated when individuals mix their labor with owned objects. These objects could be a type of object which was not previously owned by another persons, so, simply if a person mix his/her labor with an object which was not owned previously he/she can control its fruits and also have moral claims over the property he/she produced either through his/her intellectual labor or physical labor.

The Critiques- First, the ideas of mixing labor/is incoherent, because labor is an action while object is an object therefore, how we can mix action with an object. The other critiques to this theory were raised by Robert nossick and john-rewells;-they criticize this theory-by alleging/that it is not clear why labor mixing generates-property right rather than loss of labour. For these two personalities the labor that we have expended should be regarded as, a loose of labor rather than generating property right. The third critiques to this theory envisages that, the skills, the tools and the equipment which we use in laboring may be the products of social activities, therefore, according to this critiques it is not fair to leave to private monopoly something which has social contribution.

The Rejoinder- Read the following history carefully, suppose Mr. Robsan comes up with an excellent new recipe-for Chinese noodles-after weeks of effort and numerous failures, and Mr. Robsan has kept this idea to himself in his mind and does not write it down. Would any one argue that Mr. Robsan does not have at least some minimal moral claim to control the recipe?-Suppose that Mr. Nahili samples some of Mr. Robsan’s noodles and

desires to purchase the recipe. Is there anything morally suspicious with an agreement between them that grants Mr. Nahili a limited right to use Mr. Robsan’s Recipe provided that Mr. Nahili does not disclose the process?

c. The Utilitarianism

The classical utilitarian theory rests on the assumption that without exclusive rights there will be no incentive to make new inventions or works of authorship, but providing incentives for the inventor or creator is not an end itself but a means to achieve a larger goal-to promote social welfare.

Utilitarianism is more directly associated with protection of intellectual property right; the other two theories might perfectly work-in the realm of physical property right. In fact if you consider the Lockean-labor theory it was first formulated for the protections of physical property right. But the utilitarian justification is more directly associated with intellectual property right themselves. So, it is the most relevant kind of justification for our purpose here. This is a model of Anglo-American regimes of intellectual property. It talks about; incentives based regimes or systems. According to this approach, a necessary condition for promoting the creation/of valuable intellectual works is granting limited rights of ownership to the authors and inventors, the protection of intellectual property right is not an end in it self-it is rather a means to certain end, and the end is the promotion of valuable intellectual works. Valuable in the sense that, the society at large will benefit from the obtained works, so in order to achieve this grand purpose the granting of limited intellectual property right is necessary. But, the previous two justifications views the-right to private property as an end in itself, there is no consideration of external factors as such at least directly as they are. Here, intellectual property rights are viewed as instruments for realizing societal goals of having maximum amount of valuable intellectual property right for the long term benefits of the society.

So, in the absence of certain guarantees in the form-of property right, valuable intellectual works will not be created. Of course/utilitarian's-admits that, intellectual property rights themselves do not insure-the production of the maximal amounts of valuable intellectual works. But, at least absence insures failure. The theorists of this approach raise the question of if the proceeds of my investment are shared by others freely in the absence of property right why would I bother to invest my energy, time and effort then?

Accordingly, adopting systems of protection like copy right, patents and trade secret yields an optimal amount of intellectual works being produced and corresponding optimal amount of social utility.

The critiques-This theory is not without critiques, critiques accept that, it is very important to generate maximal amount of intellectual works, but they do not accept the means the utilitarian's used. The critiques also raises that, for example, if we take trade secret they are very troubling for view point of societal benefit, why we provide monopoly-right-for what is basically undisclosed or what is basically kept secret. How society is going to benefit from something which is kept secret or something which is protected in so far as the secrecy is maintained. So, there is no guarantee of long term social benefit from protection of trade secret.

The other criticism is the empirical question about the costs and benefits of copy right, patents and trade secret protection are notoriously-difficult to determine, even in the presence- of these challenges and criticism the utilitarian/approach remains strong justification for the protection of intellectual property right. In fact, most criticism focuses upon problems of implementation/rather than intellectual property itself. Do you think that these three theories are mutually exclusive?-Technically speaking, they are not necessarily mutually exclusive.

There are also some another general criticism for example, the free nature of information, the free speech argument, the social nature of information- and knowledge.

The free nature of information or knowledge;

The two building blocks of intellectual works are knowledge and information, the free nature of information and knowledge takes in to account the argument of none/ rivalries nature of intellectual property works. Monopoly unduly restricts access and use which should not be restricted. Since, intellectual works are not typically consumed by their use and since they can be used by mainly individuals concurrently there is strong case against moral and legal intellectual property rights. A lot of people can consume the same intellectual work without ever reducing what is available to prior users. This nature of the building blocks of intellectual works calls for to be free. One reason for wide spread pirating of intellectual works is that many people think restricting access and use is unjustified.

Let us take some formal argument in such a form of logical premises and conclusion;

The first premise states that if an intangible works can be used and consumed by mainly individuals concurrently then maximum access can be used or should be permitted. Intellectual works falling under the domains of copyright, patent and trade secret protection are none/rivalries. So, it follows that intellectual works must be free. To put this logical argument in other words, there is an immediate prima facie case against intellectual property rights or for allowing maximal access to intellectual works. QUESTION TO BE ANSWERED BY YOUR REASONING CAPACITY: is the above logical argument is valid? If yes why? And if no why not? Where do you think the weak point lye’s; do you think every block’s of intellectual works should be free. Can you give one best example of none/rivalries types

of knowledge or information which should not be permitted? Do you think information related to national defense or national security could serve by being answer for the above raised question. What about the movie's that is pornography in which one of the participants's of the sexual act dies a little after participating in the act of performing the said behavior. Don't you think there is a qualified social policy reason for restricting access and use of this kind of works? Each of this is none/rivalries in nature, but free access are not justifiable so the above logical argument does not entirely work. As a result, the restriction of use and access of intellectual works can be viewed in this sense.

The free speech argument against intellectual property;

This critique is based on the freedom of speech. It says that, permitting intellectual property rights is inconsistent without commitment to free speech. This is because, IPRS restrict methods of acquiring information; this does make sense in the fields of trade secret protection because, you are prohibited from acquiring that information through some mechanism. IPRS also restrict an idea; patents grant monopoly over an idea of course, there are strict procedures or pre conditions to be mate. But once these preconditions are mate, a patent system allows monopoly over an idea. And thirdly IPRS restrict the expression of an idea. This would be the case in the manners of expressing the ideas. For example, if you have expressed your idea in certain manner then you are entitled to monopolize that manner of your expression. Nobody else can express in that way; so, in this sense,-some how the copyright regime-it self restricts a freedom of expression.

Replies to the critiques;

First,-providing intellectual property right in the long run advances the commence of thought and expression. By limiting access to information and knowledge for jest short run system of intellectual property rights have in built incentives culture that advances knowledge and information in long

run. So, in the long run systems of intellectual property rather advance commence of thought and expression rather than restricting them. Second, it is not always true that free speech is so presumptively weighty than other values; There are some other values which bear equal weight if not more for instance, hate speech and verbal sexual harassment; so restricting this kind of behavior is based on other values.

The last argument against protection of intellectual property right is based on social nature of intellectual works;

Knowledge or information is social product or social construct. Individuals are raised in societies that endow them with which these individuals use to create intellectual works of all kind. They are raised in societies, they are educated in societies and the knowledge or information which they acquire from societies enables them to have creative talents that they use to come up with all kinds of intellectual works. So, creations are basically the products of social nature; so, restricting access or monopolizing this kind of intellectual works specially that are essential-social constructs is unjustifiable or unfair. According to this critique, individuals should not have exclusive or perpetual ownership of the works that they create because this works are built upon the shared knowledge of the society. This argument uses analogy from ownership of some tangible property take for example a public works dam; it is a kind of dam constructed by efforts of hundreds. Do you believe that the person who has placed the last bricks in the construction of the dam should be entitled to monopolize the construction work?

Replies for the critiques;

To begin with, it is not clear-whether the society can own something. How can we say society is owning something or how can we say society owns something. Some even go to the extent of saying that, individuals who have

been taught in the society were attending their education by paying for their education.

The system of international protection of intellectual property rights;

For the most parts of its emergence, IPR protection remains the national issue but lately after the era of industrial revolution countries came together both in trade and culture. As a consequence, this in turn facilitates for the intensification of cultural exchange and also resulted in increasing the volumes of trade relations among different countries. As a result, individual writers of copyrightable material and individual inventors of technological products-has started to advance their technological invention across the border; being aware of these developments some countries took the initiative to unilaterally protect works of foreign origin.-For instance, France; it took the initiative to protect intellectual works that are foreign in origin. Then this initiative grew to bilateral protection; under bilateral approach, two countries that are very much in greater exchange of technological product, copyrightiable works or trade relationships could engage in bilateral agreement whereby they reciprocally protect intellectual works of their respective nationals. For example, U.s.a and U.k. but, as trade and cultural exchange intensified specially in twentieth century following the eruptions of industrial revolution this bilateral arrangement proved to be inadequate because it couldn't keep the pace with the level of exchange. Because of this inadequacy, a system of multilateral protection was conceived; for the details of this point it seems necessary to refer what we have already discussed in relation to classification scheme of intellectual property rights. The treaties or conventions in the national agreements are designed based on this classification of intellectual property rights. We classified intellectual property rights in to industrial property, literary and artistic property.

The development of international protection of industrial property;

Industrial property incorporates patents, industrial design,-trade marks, geographical indication of origins, trade secret and some countries also bring-with in the realm of intellectual property system protection against unfair competition. In the second half of the nineteenth century the development of more international oriented flow of technology and increase of international trade calls for harmonization of industrial property laws throughout the world.

It was first begun in 1873 via congress of Vienna international exhibition of inventions and other industrial products. This exhibition was sponsored by the then government of Austria/Hungary; the government of Austria/Hungary sponsored an international exhibition of industrial property to be displayed for those invited governments.

To avoid the tensions of coping the copyrightable things, the Austria/Hungarian government put in place the system of IP protection-for foreign products to be displayed in the courses of exhibition. This protection of IP was regarded as key development which initially raised the awareness of many countries to recognize the international protections of IP right.

Because of this international exhibition another development was came in to being; this development was the expansion of the ideas of international protections of IP right which was realized by subsequent congresses made in different countries. For example, in 1878 the United States and the government of Austria/Hungary jointly sponsored an international congress called the Vienna congress. This congress was named as international congress on industrial property; this development led the world to another big conference-which was known as conference of delegate. It was held in Paris (France) in 1880. The Paris international conference managed to draft a new convention. As a result this draft could be regarded as the achievement of Paris delegate. Here it has to be noted that the Paris

convention does not deal with patent right only it also deals with-trade marks, geographic indications, industrial design and trade secret.

Another more sophisticated conference was also held in 1883 it was diplomatic conference therefore, it can be said that it was the conference of heads of state and government. It was designed to solve some issues; finally, this diplomatic conference came up with the Paris convention for protection of industrial property.-the fruits of this conference are still relevant and applicable.

There was some objection to these structured systems; this objection was very serious especially with regard to patents, Germany for example, automatically rejected the idea of international protection of patents because it thought it would undermine national technological capability. So, Germany was not doing the system; other objection to these structured systems-raised the concern that system of protection for patents should be left to individual countries. On the other hand for U.K and U.S.A. patents, especially inventions are basically property right which require protection jest like other tangible property interests. So, the harmonizing effects of the Paris convention was not universal however, national treatment, and priority rights are the substantive point in respect of which the system of protection under the-paris convention managed to agree on; but, for the most part, the protection was left to individual countries. National treatment means, a certain country extends the same of kind of treatment to nationals of foreign country or contracting parties as they grant to their own nationals. For instance, assume that-Kegna, Uganda, Tanzania and Ethiopia formed a certain custom union through which they exchange their own tradition for one another; hence, national treatment means Ethiopia would treat the nationals of Tanzania, Kegna and Uganda jest like it treats its own nationals the same also applies for the mentioned three countries. Therefore, the contracting parties of Paris convention agreed that they will

treat the nationals of the all contracting parties in the way they treat their own nationals.

On the other hand there is the principle of priority right or procedural right;

Patents are expected to be novel in the sense that it shouldn't be disclosed anywhere in the world, if it has been disclosed anywhere in the world the novelty requirement would vanish and there will not be a patent protection for that invention. So, to avoid such kind of problems, there is the allowance of grace period which is twelve months; for instance, if certain technological inventors who has French nationality-applies his invention to France he can also have such right to apply to Germany provided that the period of grace or twelve months have not been expired. The grace period was given to allow inventors of technological products to make their applications in other countries" this is all about what priority right is. Generally, it is twelve months kinds of principle but the whole lot of procedural and other matters are left to individual countries to be dealt with; this shows that the territorial features is still intact.

Here, it has to be noted that the above mentioned conventions are not the only held convention there are also another supporting conventions or treaties for example, in the realm of patent scheme there are two treaties these are the patent cooperation treaty of 1996 and the patent law treaty of 2005. These two treaties provides for systems of application like for example, how applications for patent in different countries are managed in advanced way.

In the fields or schemes of trade mark;

There are some treaties which have direct relationships with the issues of trade marks, among such treaties the first treaty is the Madrid agreement for the international registration of marks; it was adapted in 1891, this treaty provides for the systems of registration but, the protection is left

entirely to the unilateral decision of countries. We have also Niece agreement on the classification of goods for the purpose of international registration of marks. By the way, the Ethiopian trade mark law provides for, the compliance with these international agreements even though, Ethiopia is not a party to this convention. In 1957 it was found out that, for a working system of international protection of trade marks the products to which these-trade marks are affixed must be classified in a certain standardized manner; the systems of classification laid down by the Niece agreement tries to address this concern.

Thirdly there is a treaty called trade mark law treaty; it was adapted in 2000 but it was come in to force in 2005. It provides for stronger procedural rules for the international protection of trade marks-jest like the patent law did. Shortly, it lays down sophisticated procedural rules especially in relation to how to entertain applications and the contents of those applications. The Madrid agreement-concerning the international registration of marks has identified protocol pronounced as the Madrid protocol which was signed in 1989; Protocol stands for supplementing the original treaty or to fill the gaps that have been left by the original treaty. Major trading countries were not a party to the Madrid agreement concerning the international registration of marks, so under the Madrid protocol of 1989 those countries were brought back to the international protection of-trade marks-U.s. and Japan could be the best example. To incorporate their interests, the original Madrid agreement was somehow amended and the interest of Japan and U.S. has somehow incorporated and in 1989 the Madrid protocol supplementing the Madrid agreement for the international registration of marks has been adapted. So, the protocol is also part of the international system of protection for trade marks; with regard to Ethiopian trade marks-proclamation no. 581 when a person seeking a registration of trade marks makes application to the Ethiopian intellectual property office, the person must make sure that the goods to

which his trade mark is going to be affixed conforms to the international classifications of goods made under the Niece agreement. In fact, Ethiopia makes use of the principles underlined under this treaty without being a party to it; generally, this is what the international protection of trade mark looks like.

The third scheme is the geographical indications of origin;

In the field of geographical indication the Paris convention provides the basic protection but, there are also a supplementing conventions and protocols. There is a Madrid agreement for the equation of false and deceptive indication of source on goods this was signed in 1891 it deals with one aspect of the geographical indication regime. The Paris convention fully recognized geographical indication as full-fledged intellectual property right.

Systems of protection in literary and artistic field;

Literary and artistic works are subject matters for copy right protection; until the beginning of nineteenth century the protection of copyrightable works like literary and artistic works have exclusively been territorial confined to the geographical boundaries of individual countries. So, only nationals of a particular country were protected or only literary and artistic works produced by nationals of particular countries were protected until the beginning of the nineteenth century. At the beginning of the nineteenth century, some countries took the unilateral initiative to extend protection of artistic and literary works created by foreigners as well. For example, France, in 1810 came up with the law that protects not only its nationals but also the foreigners; of course some connecting factors must be satisfied like being a domiciliary and the work to be published in France. If these kinds of connecting factors are fulfilled then works of foreigners will receive the same protection as works of French nationals receives. So, France was the first country that recognize the rights of foreigners; other countries

follows the suits or example set by France,-Denmark in 1828 Germany in 1836 and England in 1837 all took this unilateral initiative to internationalize protections of literary and artistic works. In the middle of nineteenth century what was basically unilateral approach to international protection has somehow turned out to be bilateral whereby two countries came together for putting in place the system of protection on the basis of reciprocal standards.

This bilateral initiative comes in to picture when two countries agreed mutually to provide protection for the works of the nationals of the agreed country; for example, great Britain and U.S.A. are countries known by having greater cultural exchange so the U.S. and Britain comes together on the basis of bilateral initiatives for the reciprocal protection of their citizen's literary and artistic work. In the second half of nineteenth century a multilateral approach was envisaged; especially Europeans were very interested in making the system of protections of literary and artistic works based on the approach of multilateral agreement. As a result, serious of conferences were held in different European cities in the second half of nineteenth century which culminated in the adoption of the Bern convention of 1886 for the protection of literary and artistic works. It protected the works of authors via varieties of works in the fields of literature and art; books are good examples of the fields of literature while painting and sculpture could be the best example for the domains of artistic field and were protected under the Bern convention. Like the Paris convention the Bern convention also put in place some substantive provisions like the national treatment; the Bern convention also provides for minimum label of protection for the authors to go below which is prohibited.-This minimum standard of protections provides for automatic protection of literary and artistic works and independence of protection, these are two important principles; by automatic protection we mean that unlike patents and trade marks no registration is required, no administrative grant of the authorities

of particular country is needed. Protection is rather automatic upon the creation of the works; this is an important difference or feature of copyrightable material that distinguishes them from patentable or trade markable products. In the field of trade mark and patent, normally you are required to go to the authorities to receive the blessing of the authorities. Unless and otherwise, it will not be active before registration. But in the fields of copyright, creation of the works suffice to be active and to be accorded with protection. So, this important principle is laid down by the Bern convention and nowadays almost all countries in the world in their domestic legal system recognized the automatic protection of copyrightable products. Of course, there could be some notable exception like for example U.s. requires that in order for copyright to be fully operational, it is-necessary to notify the concerned authorities; for instance, during the publications of books, it would be necessary to notify who the holders of the copyright is and that the owners of copyright needs to exercise his right; this notification in turn facilitate the recognition of all right reserved and no part of this book may be reproduced without the prior written consents of the original right holders.-generally, copyright operates regardless of any kind of procedural requirement, meaning no need of notification, no need of registration and no need of publicity. This principle has been expressly affirmed under the Bern convention.

The principles of independence of protection;

Independence of protection means the fact that, the work is not protected by one of the contracting party does not mean that it will not be protected in the other countries; the protection given for the work in each contracting party is independent. The person who has created literary or artistic works is entitled to independent protection in each country; the protection in one country does not defend of the presence or absence of protection in other contracting countries. So, regardless of protection in any other country, protection must be given in the contracting country for the authors of the

certain intellectual property. The Bern convention provides protection for authors these bundles of protection apply for intellectual works in analog form or nondigital form. The timing of the adoption of the Bern convention meant that, it applies only for works which are manually created because at that time there was no digital technology. But nowadays, digital technology is so sophisticated that it can be utilized for the creation of works; accordingly, such kinds of works as computer programs and databases would be left unprotected if this systems were to be followed strictly. Therefore, some kinds of extensions of protection are needed because the Bern convention would be no more adequate to provide protection for these kinds of products of the digital like computer programs and data bases.

The Wipo copyright treaty;

It was adopted in 1996; the purpose of this treaty was mainly to extend the protection given by the Bern convention to works that have been produced through the use of digital technology. Hence, computer programs and data bases have now been protected as literary and artistic works under a copyright regime; if you look at our proclamation as well, it protects computer programs and data bases as literary and artistic works. So, the 1996 Wipo copyright treaty also gave recognition for the special works of some another person’s with in a one creation; such persons could be those personalities who serves as bridges between the consumers and the original creator or persons who immensely contributes to the dissemination of art and literature. For example, publisher, editors, promoters, producers and musician. But the Bern convention only protects the author of the works or persons who have intellectually created a literary or artistic work. So, it can be said that, under Bern convention the role of singer has not been recognized unless the singer himself/herself authors the melody and other necessary things.-the Rom convention for the protection of performers, producers of phonograph and broadcasting organization; this is what our laws call it as copyright and related right; that related right is a right of

these entities or entities that serve as bridge between authors and consumers. If we look at the Bern convention with respect to the protection of authors, it is built up from the national system of protection to the international plain.

General treaties;

The Wipo establishment convention;

The term wipo stands for the world intellectual property organization; it is the specialized organ of united nation, it coordinates the protection of intellectual property in world wide standard. It administers intellectual property related treaties like the Paris convention, the Bern convention and other special treaties; it also assists individual countries while they embark in devising the laws. In order to receive the assistance of the Wipo it is requirement to be a party to a Wipo establishment convention; but, being a party to Wipo does not require being a party to the other conventions it administers. This means, if Ethiopia wants to join the Wipo system it shouldn't necessarily be a party to the Paris convention, the Bern convention and the accompany treaties. Even if, individual countries are not parties to the major conventions, so as to be automatically obligated by the terms of that treaty the Wipo can still assist countries by helping them to come up with the systems of protection that somehow incorporates major principles laid down in those international conventions.

The trips agreement;

Trips is an abbreviation for trade related aspects of intellectual property;

Backgrounds for trips;

There was a system called "Gatt" which means, general agreement on trade and tariffs; it was signed in 1949. This institution basically deals with, international trades in goods; this is not related with intellectual property in

any way. The “Gatt” is both a treaty and a law governing international trade in goods and also an organization it self. Its main goal is to avoid artificial trade barriers like quotas and unjustifiable customs; there is the concept of most favored nation clause. This clause advocates for the protection given to the most favored nation must also be given to other contracting parties. At its inception the “Gatt” put in place the systems of multilateral trade negotiation. So, from 1950’s to 1990’s about eight rounds of multilateral trade negotiation were convened; the achievement of these agreements were very historical because it managed to create what is today called the WTO. WTO is a very strong institution because its dispute settlement mechanism is so strong it can enforce its decision by imposing sanctions. So, this WTO took over the roles of the international trade organization under the “Gatt” therefore, the system of protection of trade in goods laid down under the “Gatt” is now taken over by WTO. The difference between these two is basically, the countries acceding to the WTO’s systems of protection cannot selectively do so. Meaning, a country which wants the “Gatt” has no options to leave Trips; Ethiopia for instance, has joined WTO for the sake of selling its agricultural products; accordingly, Ethiopia has already started negotiation some years ago but there are some stumbling blocks to the accession process because for one reason it must be a party to the other conventions at least to the Trips agreement. In addition to intellectual property, WTO provides for trade in services; as a result, the service sector of the Ethiopian economy must be liberalized in Ethiopia where to accede to the WTO. This may be a negative component of acceding to the WTO but there are positive component as well; specially, trade in agricultural products of Ethiopia to be traded or exported from Ethiopia to European countries, it seems to be difficult because, the European Union provides quotas and also subsidies for quotas; furthermore, it also gives high protection for domestic farmers. So, if Ethiopia’s products exported to European countries, it would be difficult for Ethiopia’s product to compete with the domestic products of each European countries. Therefore it is a

better option for Ethiopia to join WTO specially to compete with domestic European products by getting rid off artificial trade barriers like quotas and unjustified customs. Hence, as far as trade in good is concerned, joining WTO is something very necessary; because it tries to remove trade limiting factors which are artificial in nature. This is briefly the international systems of protection.

CHAPTER TWO INTRODUCTION TO ETHIOPIAN INTELLECTUAL PROPERTY LAW;

THE CONSTITUTIONAL RECOGNITION'S OF INTELLECTUAL PROPERTY AND ITS PHILOSOPHICAL UNDER PINNINGS IN ETHIOPIA;