**“THE SHADY BUSINESS – IPR AND WHITE COLLAR CRIMES”**

**By:-**

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**ABSTRACT** –

White-collar crime is a daily topic in the news but by no means a new phenomenon. This article define white-collar crime and how to analyse it. It names six characteristics of white-collar crime, namely the preponderance of upper and middle-class delinquents, the motivation of financial gain, non-violence, systemic character, the breach of trust, and diffuse victimisation. It also highlights additional aspects for a working definition which can be applied to various and even rapidly changing historical contexts. This article is about the ‘shady business – IPR and White Collar Crimes’.

Examines the association between intellectual property (IP) and white collar crime (WCC), and identifies future research that might benefit policymakers; federal, state, and local agencies; and the general public. This research identifies some of the economic, political, and legal theories that support the creation and maintenance of IPR laws, as well as those that support criticisms of IPR protections. and also crimes associated with IP and controversial applications of IP law are described to illustrate ways in which IPR violations are associated with WCC and identify conflicting concerns and biases of the numerous stakeholders in IP.

**INTRODUCTION –**

The term “intellectual property” generally refers to any product of the human intellect that's deemed unique and potentially valuable within the marketplace, including a thought , invention, literary creation, unique name, business method, process , formula , and computer program. Since the creation and dissemination of IP is a crucial a part of economic, social, and cultural development, laws are created throughout the planet to define and protect the rights of these who develop IP. These laws include protections through patents, copyrights, trademarks, and trade secrets, and are enforced primarily through legal action and prosecution . White-collar crime has been defined as “an illegal act or series of illegal acts committed by nonphysical means and by concealment of guile, to get money or property, to avoid the payment or loss of cash or property, or to get business or personal advantage.” This definition, along side other definitions recently proposed by scholars, extends beyond the normal definition of WCC as crime committed by people of high social station and focuses on the offense instead of the offender.

Development and enforcement of IP laws are primarily designed to “advance public welfare through the skills of authors and inventors.” However, these efforts are complicated by the very fact that IPR violations are related to other crimes, including terrorism. for instance , profits from illegal sales of counterfeited goods and insurance fraud8 are traced to the funding of terrorist activities and other gangland . Misappropriated IP has also served as a way of acquiring symbols of legitimacy (e.g., a company’s trademark) for fraudulent sales, investment scams, and collection of private information (i.e., identity theft).

This research identifies a number of the economic, political, and legal theories that support the creation and maintenance of IPR laws, also as people who support criticisms of IPR protections. Although a radical review of literature altogether fields related to IP was beyond the scope of this study, this review identified a spread of issues and concerns associated with IP and established a basis for gathering information from primary sources, and also crimes related to IP and controversial applications of IP law are described for instance ways during which IPR violations are related to WCC and identify conflicting concerns and biases of the various stakeholders in IP.

Towards a definition

In this issue, we'll use the terms ‘white-collar crime’ and ‘economic crime’ interchangeably. to bypass the arduous task of crafting a fairly useful definition, many authors take refuge to a non-systematic case-by-case approach and work with an inventory of relevant crimes. White-collar crime, then, typically encompasses the subsequent offences committed mainly by corporations, their owners, executives or employees also as by government or municipal officials and members of the professions: fraud, corruption, embezzlement, misappropriation and malfeasance, tax fraud, property theft, trading , concealment , Ponzi schemes, misrepresentation of monetary statements, price-fixing, illegal cartels, and collusion also because the breach of environmental, health and safety regulations[[1]](#footnote-2).

Historically, it took an extended time to categorise this type of malfeasance under the rubric of crime, because people that committed white-collar crimes weren't perceived as ‘typical criminals’ who engaged in theft, manslaughter, or murder. They weren't a part of what was considered the criminal milieu during a narrow sense. There was also the impression that white-collar crime was victimless and not as damaging to society as offences like robbery. In some countries, white-collar criminals can still expect much lower sentences than other sorts of criminals.

The assessment of the offences committed within the corporate world began to vary in light of the theories of sociologist and criminologist Edwin Hardin Sutherland, who not only established the criminological term ‘white-collar crime’ in 1939, but also made clear that crimes weren't exclusively committed by lower-class offenders. Sutherland, who had among other things previously worked on juvenile delinquents in ghettos of recent immigrants, pointed to certain parallels like the influence of cultural milieus. this idea violated existing prejudices that high-ranking persons wouldn't or only in highly exceptionally circumstances commit crimes which economic crimes were thanks to ‘merely technical violations’, which ‘involve no moral culpability’. Sutherland, who is taken into account one among the foremost influential criminologists of the 20 th century, vehemently contradicted widespread views that criminality was caused by poverty or biological and psychological factors. He stated that the entire damages of white-collar crimes were several times above those of all other crimes combined. He also spoke out against the relative leniency for perpetrators of economic crimes compared to those of ‘normal’ crimes.

The privileged position of white-collar criminals is that the results of several factors. Their offences are especially difficult to prosecute because the perpetrators use sophisticated means to hide them. they will also often afford the simplest lawyers and have the political clout to influence the legislative process to their advantage and, if need be, to bribe prosecutors and judges. Additionally, the category bias of the courts works to their benefit. The law is usually seen as not binding, as least not for and by economic elites. Sutherland quoted a fraudster, who described the legal code of the USA within the following words:

Law is sort of a cobweb; it’s made for flies and therefore the smaller sorts of insects, so to talk , but lets the large bumblebees break through. When technicalities of the law stood in my way, I even have always been ready to brush them aside easy as anything.

Building on such observations, we propose a more general definition of economic crime for the aim of historical analysis.

The following six elements should be included in any reasonable definition of economic or white-collar crime, albeit they're neither comprehensive nor present altogether economic crimes.

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| (1)  | Following Sutherland’s classic definition ‘White-collar crime’ is ‘committed by a person of respectability and high social status in the course of his occupation’. Even though lower-level employees like accountants or traders occasionally cause colossal damages – like Nick Leeson who brought down Barings Bank in 1995 – defendants typically are not members of the lower classes. Instead they have attended good schools and very often prestigious universities, have no previous criminal record, and possess all the characteristics of the middle to upper middle classes. |
| (2)  | Economic crimes are illegal acts in which offenders’ principal motivation is economic gain. Individuals, groups of people or corporations purposively act in an illegal manner to secure financial returns that cannot be collected by legal means. |
| (3)  | White-collar crime is generally non-violent, at least in terms of direct, physical violence. It takes place in the context of regular, non-criminal business transactions and is very often not the central business model itself. White-collar criminals often spend most of their time with perfectly sound and legitimate businesses. Although there can be a certain overlap with ‘organised crime’, whose core methods involve the use or the threat of physical violence, we suggest keeping the two phenomena separate. Mafia and other such groups are formed primarily as criminal organisations operating in illegal markets while ‘normal’ corporations are founded as legitimate institutions, publish business reports, work with the authorities, and pay taxes. Moreover, they operate mainly in legal markets and do not regard violence as standard operating procedure. |
| (4)  | Economic crime is often systemic, part of a culture – either of a corporate culture inside the firm or a culture in the firm’s environment, e.g. when it sells products to corrupt governments. In the first case the corporations’ control mechanisms are typically weak, intentionally or unintentionally, which is an obstacle to the prevention and the investigation of economic crimes. Individual responsibility is therefore hard to ascertain. Defendants routinely deny responsibility and point to their superiors who made them commit crimes, or to their inferiors who engaged in shady practices without their knowledge or authorisation. |
| (5)  | All economic transactions depend on a certain degree of trust, without which transaction costs would simply be too high for economic activity. White-collar criminals abuse the good faith of various stakeholders, from customers to the general public, from shareholders to the authorities. Therefore, white-collar crime often coincides with the breach of trust.[[2]](#footnote-3) |
| (6)  | Frequently, the victims of white-collar crimes are not easily identifiable because the harm is spread out over many people. Bribery can lead to overcharging in public projects which results in higher taxes for all citizens of a country. As these facts are very often hidden, economic crime appears to be victimless. In fact, it causes substantial harm, but victimisation is diffuse. |

These six elements involved in economic malfeasance, i.e. upper- and middle-class delinquents, motivation by financial gain, nonviolence, systemic character, breach of trust, and diffuse victimisation, move us past a merely case-based approach even if they do not add up to a fully satisfactory, all-encompassing definition. Attempts to find such a definition are hampered by the fluid lines between economic crime and legal practices. Unlike murder or theft, whose definitions have been pretty stable across centuries and different countries, white-collar crimes are not the same in different countries and time periods. It is very much a moving target. What is considered a normal business practice can become a crime at short notice. Thus bribes were even tax-deductible, until laws changed and criminalised the practice.

**Theoretical Bases for property Protections**

 Traditionally, justification for IP laws is predicated on the view that strong protection of IPR is that the best, if not the sole , means of stimulating innovation and economic process . Despite widespread support of this view, opposition to IPR protections has persisted for hundreds of years . Views on the acceptable role of state and law within the development of IP vary tremendously among economists, political theorists, sociologists, the legal profession , enforcement , and various IP consumers. Since one among the results of governmental involvement in IP issues is that the criminalization of IP use and exchange, examining these differing views may be a necessary a part of evaluating the character and consequences of IP laws, and tangentially the character and consequences of IPR violations. Recent arguments favouring weak IPR protections include the contention that levels of IPR protections are often inversely associated with innovation, economic process , and global health. Specifically, it's argued, weak protections tend to stay market prices low, thus stimulating economic growth; strong protections, “by creating a monopoly, may induce the producer to accumulate ‘sleeping patents’ in an attempt to preserve market share,” thus stifling both innovation and economic process . additionally , strong protections, including the planet Trade Organization’s agreement on Trade Related Aspects of property Rights (TRIPS), could, consistent with some, threaten global health because they reduce access to life-saving medicines, particularly in developing countries. Although this on-going, and currently unresolved, argument has produced more questions than solutions, partially due to the “lack of cumulative empirical evidence,” the dialogue may be a useful complement to a summary of problems and concerns in IPR enforcement for an assessment of future research needs.

**Economic Theories**

From an economic perspective, a primary purpose of IP laws, like many other laws, is to supply a desired result that economic process , or competition, fail to supply . Specifically, IP laws are designed, in part, to guard future economic gain from IP products as an incentive for investing in research and development (R & D) today. Without such protections, it's assumed that innovation would decline because initial costs can't be recovered during a free market environment. In 1962, Kenneth Arrow identified “three reasons why perfect competition might fail to allocate resources optimally within the case of invention”: risk, inappropriability, and indivisibility. Both “risk” and “indivisibility” address the matter that R & D often require substantial expenditures of your time and money. When invention efforts are unsuccessful, this theory holds, expenditures fail to yield reasonable economic benefit to the inventor. once they are successful, the value of manufacturing the primary prototype is typically far greater than the value of manufacturing subsequent copies, yet pricing (in a free market) tends to be more closely associated with the latter.

**Political Theories**

Although justifications for IP laws rely heavily on economic assumptions, they also believe political theories, like the concept that ideas should be considered property and government should protect these sorts of property. Therefore, examination of IP laws, including violations of these laws, should include analysis of underlying political theories to work out if the results of IP laws are according to established belief systems of the society during which the laws apply. the primary justification for IPR that Ostergard examined – John Locke’s labor theory of property – contends that “objects produced by a private through the blending of labor with resources are the property of that individual alone.” Although this dictum is centrally concerned with individual rights, it also requires that “others aren't made worse off by the acquisition.” This stipulation raises the question, “What is ‘worse off’?” One answer, provided by Robert Nozick, is that individuals are worse off if “they lose the chance to enhance their situation.” supported this definition, Ostergard argued, “those who are monetarily restricted from buying a replacement drug which will save their lives are worse off”; therefore, IP laws – as they're currently designed – can't be justified with Locke’s labor theory. This analysis identifies as a primary weakness in IP law the failure to differentiate between “essential” and “non-essential intellectual objects,” or the tendency to “treat all intellectual objects equally.” to differentiate essential from non-essential objects, Ostergard suggested, a “physical well-being criteria” could be used. This criteria would, for instance , deem a music composition non-essential, since “people would be no worse off if they were monetarily restricted from buying a replacement music compact disk .” Other criteria for differentiating intellectual objects are the enhancement people’s physical well-being and overall well-being, including intellectual and cultural enhancement. Using these criteria, music and cinema would be included as essential objects, within the absence of which individuals would be “worse off.”

Legal Foundations of Intellectual Property Rights An early version of current U.S. patent law was adopted in colonial America “to promote in the United States the absorption, dissemination and use of technical knowledge available in foreign countries.” These and other IP laws were subsequently developed as the needs of the country changed and its status changed from importer of IP to exporter.

**Intellectual Property Protections, Definitions[[3]](#footnote-4)**

**Patent** - Protects any invention or discovery of a “new and useful process, machine manufacture, or composition of matter, or any new and useful improvement

**Copyright** - Protects original works of authorship, specifically people who are fixed in any tangible medium of expression, and provides the holder the prerogative to breed , adapt, distribute, perform, and display the work

**Trademark** - Defined as “any word, name, symbol, or device, or any combination thereof…which an individual features a real intention to use in commerce and …[register], to spot and distinguish his or her goods…from those manufactured or sold by others and to point the source of the products , albeit that source is unknown.”

**Tradesecret** - Defined as tip of a business.

Provisions for both criminal and civil penalties for IPR violations are detailed in federal law, also as various state laws. An appendix to the present report provides a basic description of federal IP laws, including grounds for challenging IP ownership, public use of protected IP, and violation penalties.

A major dispute related to copyright loss estimates involves disagreement over the quantity of cash an IP owner would have gained within the absence of violations. it's unrealistic, for instance , to equate an illegal copy with a lost sale, since it's unlikely that each one owners of infringing material would have purchased a licensed copy if infringing copies weren't available. Reports of copyright violations also are challenged by the argument that some violations, like downloading for private use, shouldn't be considered illegal, or a minimum of should be distinguished from other sorts of IPR crime. Despite the difficulties with estimating and reporting losses, published statistics are often useful methods for conveying the magnitude of IPR violations.

**Crimes related to property i.e, IPR and WHITE COLLAR CRIMES[[4]](#footnote-5) -**

 Violations of IPR are often classified as a sort of white-collar crime, specifically a whitecollar theft or fraud. for instance , the illegal reproduction of a movie for the aim of selling counterfeited copies to others for profit may be a WCC under this definition because it involves the acquisition of property through deception, or fraud, for business or personal advantage. The sale of counterfeited drugs also involves deception about the manufacturer or content for illegal gain , and therefore the illegal use of a secret to develop a marketable product involves deception concerning truth ownership a thought or information. additionally , IPR violations are often wont to facilitate other WCCs, such as

 ▪ Investment fraud (e.g., employing a trademark of a legitimate company to deceive investors);

 ▪ concealment (e.g., concealing funds acquired from counterfeit goods sales);

 ▪ Fraudulent sales (e.g., creating a bogus internet site to deceive customers);

 ▪ fraud (e.g., using personal information acquired from a misappropriated database or solicited employing a misappropriated trademark of a legitimate company);

 ▪ Other online scams (e.g., fraudulently acquiring donations using the seal of the American Red Cross);

 ▪ Racketeering (e.g., organized efforts to misappropriate IP); and

 ▪ evasion (e.g., failing to report income acquired through IP violations).

one among the best public concerns about IPR violations (as a sort of WCC) is that the threat to public health and safety, not only in foreign countries but also within the us . for instance , in L.A. , investigators arrested five people in reference to the distribution of counterfeited power tools, which were marked with brand names like Makita, Black and Decker, and DeWalt and bore counterfeited “UL” stickers (from Underwriters Laboratory) to point that the tools had been inspected and authorized as safe. during this case, quite $9.7 million in counterfeit merchandise was recovered. Other cases have identified counterfeit drugs, medical supplies, and aircraft parts as posing a danger to the general public .the web is one among the foremost easily accessible venues for the illegal use of IP as a facilitator for other criminal activity. during a case of market manipulation, for instance , an employee of a communications company called Pairgain used trademarks and other symbols copied from the web to make an internet page that seemed to be a Bloomberg financial website . the aim of this trademark violation was to legitimize a report as a Bloomberg report, during which the worker wrote false information about the Pairgain activities. due to the apparent legitimacy of the report, the worker was ready to manipulate the worth of Pairgain stock and make a profit by selling his personally held stock at artificially inflated prices. In another case, a trader in Texas manipulated stock prices by posting a false handout attributed to PR Newswire on a Yahoo! Finance message board announcing that Lucent Technologies would have a quarterly earnings shortfall. These cases illustrate how the web are often wont to commit IP violations for the aim of committing WCCs. Since WCC is usually supported deception, and IP like a trademark can represent a corporation or product that's recognized as valuable or reliable, it's not surprising that IP violations are often including other WCC. Another WCC that's frequently related to IP violations is concealment , which generally involves attempts to disguise truth origin or ownership of funds derived from criminality through financial transactions. The prevalence of the association between IP violations and concealment prompted amendments to the federal concealment statute to incorporate specific references to infringement of copyright and trafficking in counterfeit goods and services. The consequence of those changes is that any use of cash derived from certain sorts of IPR violations to fund specific sorts of crime is taken into account concealment .

**Organized Crime and property Rights Violations**

 The Racketeer Influenced and Corrupt Organizations (RICO) statutes were created to “seek the eradication of gangland within the us by strengthening the legal tools within the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to affect the unlawful activities of these engaged in gangland .” RICO statutes were designed to enable punishment of criminal activity, including certain sorts of IP violations, that form a pattern of organized behavior, supported the idea that much of the facility of gangland syndicates springs from the cash they create through “various sorts of [illegal] social exploitation.” This broad area of law also can be wont to sanction owners of IP who seek to guard their rights in impermissible ways. during a recent case, for instance , a cable company allegedly threatened to sue customers of another company, which was selling decoder boxes for “pirating” cable channels, if they did not pay the cable company a (settlement) fee. supported the pattern of misrepresenting that the mere purchase of a descrambler was illegal so as to get money (which served because the basis for mail and wire fraud charges, two other RICO predicates), a court upheld the customers’ rights to sue the cable company and their firm under RICO.

**Controversial Applications of property**

 Law a serious source of conflict within the IP debate is differences in cultural norms, not only among nations but also among groups defined by age or behavior. people that associate themselves with the web culture, for instance , often have different beliefs about appropriate uses IP than people within the enforcement community. Individuals in several countries may have different views on appropriate uses of IP due to differences in IP laws or generally accepted practices in their community. Beliefs and views about IP could also be supported legal, social, or ethical considerations, and, more importantly, can have visceral meaning for community members that's not easily relinquished.

**The structure of the difficulty**

This special issue analyses the history of economic crimes with the assistance of case studies from four centuries. It seeks to probe the causes of those offences also because the penal, political, social, and other consequences that they had for those that perpetrated them also as for the form of corporate governance. It also investigates the general public perception of those crimes. In other words, the issue’s goal is to historicise economic criminal actions and public perceptions of them. an equivalent goes for the training processes and countermeasures adopted by states, trade associations, self-regulatory bodies, and corporations .

It also traces the invention of latest legal categories to return to terms with these crimes, which frequently created these crimes during a technical sense. We ask whether the expansion in economic crimes may be a results of the multiplication of business regulations and therefore the proliferation of potential offences. Finally, we discuss the training processes and countermeasures adopted by states, trade associations, self-regulatory bodies, and corporations .

**Conclusion**

White-collar crime isn't only a really large discipline but a subject fraught with definitional fuzziness. This introductory article has moved beyond case-by-case definitions and tried to pinpoint a number of the core elements of economic crime. The empirical essays during this volume cover considerable ground by that specialize in diverse phenomena from fraud to corruption, from environmental crime to the manipulation of privatisation processes also because the reaction of lawmakers, authorities, and civil society to instances of malfeasance and systemic crimes. Still, the essays during this volume leave many gaps. In future research more detailed and archival-based case studies on individual companies and crimes also as general histories of certain sorts of offences are needed. We even have to analyse the reaction to the challenge of economic crime by legislation and jurisdiction, by corporations as potential offenders and victims, and by society at large. White-collar crime is an integral a part of capitalism, and it's about time for scholars to explore this dark and too long neglected side of economic history.

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