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# Trademarks in Outer Space: Supporting the Off-World Economy

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At this critical threshold of expansion of commercial activity off the Earth's surface – in Low Earth Orbit, around 2,000 kilometers from Earth on the moon, and on Mars – the need to fill the void of legal regulation in space, which is now a legal "no man's land," is increasing with every launch.

Trademarks in outer space, for example, have been debated for decades, but nothing has been done since space travel began in 1957. With multiple countries traveling in outer space now, and Earth-orbit hotels, together with moon and Mars cities, planned, the legal structure for trademarks in outer space needs to be implemented *now* to avoid chaos off-world.

This brief review sets out the current legal situation and principles and parameters for a working model, including how WIPO can be an important player in this process. The creation of rights in international treaties and national statutes needs to be followed by enforcement of rights via courts, contracts, arbitration, and mediation. Only trademarks will be reviewed here, but these principles can also be applied to patents, copyright and other intellectual property (IP) rights.

**The current state of play: From exploration to commercialization**

Outer space is already crowded. The originators of space travel, the Russian Federation and a few of its Commonwealth of Independent States allies (formerly the USSR), and the United States, ventured into space in the late 1950s and 1960s in the famous "Space Race." These countries have now been joined by China, the European Space Agency (ESA), India, Israel, Japan, and others.

New space programs are being developed in countries such as Egypt, Indonesia, Iran, Malaysia, Pakistan, the Republic of Korea and Saudi Arabia. Moreover, we are seeing growing private sector flights into space, with companies like Virgin Galactic, SpaceX, and Blue Origin, ramping up activity in

collaboration with intergovernmental efforts, such as the International Space Station (ISS) and its possible successors.

Why is 2021 different from 1957? The key shift in space development has been from government to public-private partnerships to private activity. In other words, space development has evolved from exploration to commercialization. Of course, the countries of Earth will continue to explore space, and it is generally understood that space exploration should benefit all humankind. However, we can no longer turn a blind eye to what is actually now happening off-world.

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**Existing international approaches to outer space generally**

The legal status of *physical* property (e.g., spaceships or satellites) in outer space has been a recurring topic in United Nations', bilateral and multilateral agreements, proclamations of nations and intergovernmental organizations, international commission initiatives, and studies by nongovernmental bodies. However, there has been no international consensus on the status of *intangible* property, specifically, intellectual property.

The internationally recognized demarcation line between Earth and outer space remains the "Kármán Line," set at 100 kilometers above the Earth's mean sea level. However, the concept of demarcating Earth from outer space is not universally accepted. The United States, for example, has consistently refused to recognize any such borders and has extended its patent legislation to govern outer space inventions made, used, or sold in outer space on a space object or component thereof under the jurisdiction or control of the United States.

**United Nations Outer Space Treaty (1967)**

The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (1967) was drafted to address exploration and research activities of independent states. Its objective is to ensure that such activities are pursued "for the benefit and in the interests of all countries" and are "the province of all mankind." This collective spirit is shared by later treaties concerning outer space. As such, parameters for property ownership and territorial governance have been absent from such agreements. Although this treaty specifies that outer space is not subject to national appropriation by a claim of sovereignty (i.e., by use, occupation, or other means), it could be adapted to accommodate trademark protection as a way to regulate commerce. A new agreement echoing this treaty can be seen in the "Artemis Accords," concluded in October 2020, which set out general principles on space exploration.

**United Nations Rescue Agreement (1968)**

The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched Into Outer Space (1968) was ratified by the United Nations to ensure that persons or *property* of one state will be returned to that state if located by another participating member state. While the agreement is mostly designed to ensure the safe return of astronauts, it also includes provisions mandating the return of *property* that may (1) be rescued from outer space; (2) fall from outer space and land in the territory of another state; or (3) fall from outer space and be found on the high seas.

**United Nations Liability Convention (1972)**

The Convention on International Liability for Damage Caused by Space Objects (1972) contains distinct dispute resolution provisions *concerning physical property* that could provide groundwork for an IP rights enforcement system to govern outer space activities. Specifically, this agreement ties liability to applicable Launching States and specifies that states can claim Launching State rights based upon (i) the identity of the state that launches or procures the launching of a space object, and (ii) the territory or facility from where a space object was launched. The treaty allows for multiple states to be classified as Launching States for a single object based upon shared connections to a particular launch, and it allows for claims of joint and shared liability as well as claims for contributing liability that resemble traditional common law tort damage mechanisms.

**United Nations Registration Convention (1975)**

The Convention on Registration of Objects Launched Into Outer Space (1975) provides some clarification on jurisdiction by establishing a formal recordation system for *physical* objects launched into space. There may be a possible trademark registration connection here.

**United Nations Moon Agreement (1979)**

The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (1979) focuses on activities on the moon and other planets or space surfaces. This treaty could provide the framework for regulation and control over the flow of goods or services on the moon, should such trade ever arise. As an example, jurisdiction would be confirmed upon export (departure from one state's moon facility) and import (delivery to a different state's moon facility).

**International Space Station (ISS) Treaty (1998)**

The International Space Station Intergovernmental Agreement has been signed by the 15 governments that are currently participating in activities conducted within the International Space

Stations (ISS). It permits participating nations to extend their jurisdiction to the ISS, thereby creating different national zones that correspond to the separate pressurized modules of the ISS. The ISS Treaty is the first to specify *IP protection* as an objective, and traditional protections for patents, trade secrets, and even marking procedures are specified. Jurisdiction is determined by location of the activity pertaining to the IP, specifically the pod or specific areas that may be under the control of a nation's particular ISS activities at a given time.

**Law of the Sea**

International laws and customs concerning the high seas are often cited as an ideal model for regulating outer space activities, since the oceans are beyond any one nation's sovereignty. The most recognized agreement is the United Nations Convention on the Law of the Sea (UNCLOS) (1982). It specifies sea "territories" based on concepts of internal waters; territorial waters (i.e., state jurisdiction over the initial 12 nautical miles from its coastline); further contiguous zones for enforcing certain tax, immigration, environment, and customs laws; and the hotly contested concept of the 200-nautical-mile "exclusive economic zones" for use of natural resources.

**The time is ripe for international discussions on IP and outer space**

As detailed above, there is a wide body of existing outer space *physical property* law in the form of United Nations agreements and declarations and national government agreements and legislation. These may provide helpful foundations for outer space trademark regulation and could be combined with national laws, international custom, international treaties, and dedicated international organizations to establish norms and processes. Given the growing potential for commercial activity in outer space, the time is ripe for governments to consider a more robust road map for extending IP protection to outer space. A first step might involve updating the excellent 2004 WIPO study, *Intellectual Property and Space Activities,* to include analysis of the state of play in space in 2021, which has changed considerably since its publication. The study might also include specific suggestions on how to implement a plan of action. These might include:

- **Approach #1: Madrid Protocol Extension**

The easiest way to expand trademark protection to space is to use the current Madrid Protocol, which is administered by WIPO and currently has 109 members and covers 125 countries. A new protocol could be added to the treaty, to amend the accession process (Article 14) to allow areas in outer space to become jurisdictions. Such a protocol could expand protection to Earth's orbit, the moon, and Mars, which each member could either accept or reject. This may also need to be reflected in the Paris Convention for the Protection of Industrial Property (1883). Alternatively, the new protocol could extend the protection available to a given member state on Earth to off-world

areas. For example, India could declare that rights granted under the Madrid Protocol for the International Registration of Trademarks extend to a space-orbiting Indian hotel.

- **Approach #2: New treaty to protect trademarks**

Another option would be to create a new treaty specifically for trademarks, similar to the IP sections of the ISS Treaty, or amend the existing treaties listed above to include trademarks off-world. Such a treaty could fully develop the exact scope of protection for the use of trademarks and other IP rights off-world and provide for appropriate enforcement mechanisms, such as court or arbitration panel review. Several of the treaties noted above already protect physical property and may simply need to be amended.

As we enter the “New Roaring '20s' of the 21st century, we will need to establish at least a rudimentary IP framework for Earth’s orbit, the moon and Mars.

**A role for the WIPO Arbitration and Mediation Center?**

If new rights were to be created, how could they be enforced? Developing a working court system for space will be a huge task, but a number of more practical solutions can be accomplished more easily. For Earth territories, a contractual choice of law and jurisdiction clause, mediation, and arbitration could be put into effect immediately. The WIPO-initiated Uniform Domain Name Dispute-Resolution Policy (UDRP), which resolves Internet domain-name disputes without the need for court litigation, is an excellent example of a dispute resolution system with no physical presence. The WIPO Arbitration and Mediation Center is a leading provider of services under the UDRP and frequently organizes virtual online panels with no specific country jurisdiction except “cyberspace” to decide the fate of disputed domain names.

**To sum up**

As we enter the “New Roaring ‘20s” of the 21st century, we will need to establish at least a rudimentary IP framework for Earth’s orbit, the moon, and Mars. The first step may be for a high-level study to be coordinated by an intergovernmental organization – WIPO would be ideally placed to manage such a study – followed by a possible amendment to the Madrid Protocol or creation of a new treaty that is either trademark-specific or IP-general. All nations stand to benefit from balanced, well-organized mechanisms for the protection and enforcement of trademark and other IP rights in outer space without hampering humankind’s journey away from its home world.

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