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# Comparative Analysis of Licensing Intellectual Property in The United States and The European Union

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**Abstract:** Intellectual property (IP) licensing is a fundamental mechanism for the transfer of technology, promotion of innovation, the facilitation of global commerce and the promotion of economic development. As economies have shifted from being mainly industrial to more knowledge-based and service-based, the value of intangible assets, such as, patents, trademarks, copyrights and trade secrets, has dramatically increased. As "license" is a grant of permission, IP licensing allows companies to sell their ideas and creations by allowing others to use, develop or commercialize protected technology, works or brands under specific contractual terms. This dynamic is especially significant in a globalized world characterized by collaboration and cross-border partnerships. This research paper aims to provide a detailed comparative analysis of intellectual property licensing in the United States and the European Union, focusing on foundational legal principles, licensing regime structures, key doctrinal and regulatory distinctions, enforcement practices, and current challenges such as digital content regulation. By examining both similarities and differences in these legal systems, the paper will clarify on how licensing practices shape and are shaped by broader economic and legal contexts.

**Keywords:** Intellectual Property, Licensing, Patents, Trademarks, Copyright, Trade Secrets, TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement, Lanham Act, the Uniform Commercial Code (UCC), The European Union Intellectual Property Office (EUIPO), Directives.

**Introduction:** Although the United States and the European Union having similar economic purposes — such as, the promotion of innovation, competitiveness, and public access to technology—each of them has established distinct legislative frameworks for governing intellectual property licensing. These distinctions derive from varying constitutional foundations, legal traditions (common law versus civil law), administrative systems, and policy agendas. The U.S. approach emphasizes market efficiency, contractual freedom, and minimal formalities, allowing private companies to negotiate license agreements with a great deal of flexibility. In contrast, the European model is shaped by its civil law legacy, with an emphasis on statutory formalities, public monitoring, and cross-membership harmonization through EU directives and regulations. This divergence has an impact on how licenses are drafted, interpreted, enforced and regulated. Moreover, characteristics exist in the treatment of moral rights, exhaustion concepts, antitrust oversight and technology transfer regulations. In addition, while both regions are signatories to international agreements such as, the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement under the WTO (World Trade Organization) and collaborate with world-wide organizations such as, WIPO (World Intellectual Property Organization), these international documents are implemented and interpreted differently.

**In the United States**, intellectual property licensing is governed by a legal framework that incorporates both federal statutory law and state-level contract principles. The main sources of law governing intellectual property rights are:

- Patent Act (35 U.S.C. §§ 1)
- Copyright Act (17 U.S.C. §§ 101)
- Lanham Act (15 U.S.C. §§ 1051)

- Defend Trade Secrets Act (DTSA) (2016, codified at 18 U.S.C. § 1836)

These federal statutes provide inventors, authors, brand owners, and corporations with substantial rights to govern the use and profit of their intellectual inventions. Licensing serves as a legal mechanism which certain rights are shared, transferred, and commercialized.

Although federal intellectual property statutes confer substantive legal rights, enforceability and interpretation of IP licensing agreements are generally governed by state contract law. Fundamental contractual doctrines include mutual assent (offer and acceptance), consideration, contractual capacity, and legality of purpose.

In some contexts, licenses involving software and digital content, Article 2 of the Uniform Commercial Code (UCC) may be applied to treat software licenses as transactions in goods. This interpretation was upheld in ProCD, Inc. v. Zeidenberg, where the Seventh Circuit found that these types of licenses could form part of an enforceable agreement under UCC § 2-207. See ProCD, Inc. v. Zeidenberg, 86 F.3d 1447, 1450–53 (7th Cir. 1996). Nevertheless, the application of the UCC to software licenses remains controversial and jurisdiction dependent. In addition, certain states have adopted the Uniform Computer Information Transactions Act (UCITA),

a model law specifically designed to govern software and information licensing, though its adoption has been limited (Maryland and Virginia enacted) and controversial.

Licensing disputes may also invoke key common law doctrines, including unconscionability, public policy restrictions, and contra proferentem (interpretation against the drafter), all of which may affect how license terms are construed and enforced in court.

**The EU's legal framework reflects** a combination of national laws and supranational directives and regulations. Applicable directives include:

- The European Patent Convention (EPC);
- Information Society Directive (2001/29/EC);
- Enforcement Directive (2004/48/EC);
- Trade Secrets Directive (2016/943);
- Digital Single Market Directive (2019/790).

Licenses often require formalities such as registration with the European Union Intellectual Property Office (EUIPO) or national patent offices. Civil law traditions dominate, emphasizing legal formalism and codification. EU institutions such as the European Patent Office (EPO) and the European Commission (especially DG COMP and DG GROW) shape IP licensing policy.

The European Union's approach to intellectual property licensing is marked by a strong reliance on codified legal norms, formal registration processes, and a significant level of regulatory standards achieved through EU directives and regulations. This framework promotes uniformity and legal predictability across the Member States, ensuring that right-holders and licensees operate under a consistent set of rules. However, the system also introduces more rigorous procedural requirements for drafting, executing, and enforcing licenses compared to the relatively flexible U.S. model. Furthermore, EU licensing policy reflects a deliberate effort to balance economic access, consumer protection, and author remuneration by creating a regulatory environment that is both structurally formalized and adaptable to the demands of a rapidly evolving digital challenges.

The distinctions in intellectual property (IP) between the United States and Europe are manifest in a variety of critical areas, including laws, regulations, and the registration and enforcement processes.

**One of the key contrasts** between the U.S. and European patent systems concerns the rules governing priority of invention. The European Patent Office (EPO) and national European systems apply the "first-to-file" principle, under which patent rights are granted to the first person to file a valid patent application for an invention. This encourages early filing and can shape strategic decisions for inventors and companies seeking protection in Europe. Historically, the United States used a "first-to-invent" system, awarding patents to the individual who could prove they were the first to conceive the invention, even though another party filed first. However, with the enactment of the America Invents Act (AIA) in 2013, the U.S. transitioned to a "first-inventor-to-file" system. While still requiring that the filer be the actual inventor, this system prioritizes the timing of filing over evidence of earlier conception, thus aligning more closely with European practice. As a result, timely and well-prepared patent filings have become increasingly important in both jurisdictions.

**Moreover**, in the United States, trademark protection is primarily granted through a federal registration system administered by the United States Patent and Trademark Office (USPTO) under the Lanham Act. Trademarks are protected nationwide once registered, although common law rights may arise from actual use in commerce within specific geographic areas, even without federal registration.

One of the most recent landmark cases, Spotify USA

Inc. v. Mechanical Licensing Collective, in January 2025, a U.S. federal court dismissed a lawsuit brought by the Mechanical Licensing Collective (MLC) against Spotify. The MLC claimed that Spotify misrepresented revenue by bundling audiobooks with its Premium music service, allegedly reducing its music royalty obligations. The court found Spotify's bundling practices did not breach statutory licensing rules under the Music Modernization Act (MMA). The decision illuminates the challenges in adapting licensing models to hybrid digital platforms. It emphasizes the need for licensors and licensees to proactively define revenue attribution mechanisms when new types of content are integrated into existing IP licensing frameworks.

In Europe, trademark protection can be obtained either at the national level (for example, through registration with a national IP office like Germany's DPMA or France's INPI) or at the EU level through a European Union Trademark (EUTM) registration with the European Union Intellectual Property Office (EUIPO). The EUTM system provides unitary protection across all EU Member States, offering an efficient and cost-effective mechanism for companies operating across multiple European markets. This centralized EU trademark system, established under Regulation (EU) 2017/1001, simplifies the administrative process and enhances brand protection across the EU.

**Furthermore**, In the U.S., the standard patent term is 20 years from the filing date of the non-provisional application. To keep the patent in force, patentees must pay maintenance fees at 3.5, 7.5, and 11.5 years after the grant. Failure to pay these fees results in the patent expiring before the end of its term. Additionally, the U.S. offers patent term adjustments (PTA) to compensate for delays in the USPTO's processing of the application. PTAs can extend the patent term beyond the standard 20 years, ensuring that patentees receive a full term of enforceable rights.

In Europe, the standard patent term is also 20 years from the filing date. However, each designated country where the patent is validated may have its own requirements for maintaining the patent, including annual renewal fees. These fees must be paid to the national patent offices of the countries where the patent is in force. Failure to pay renewal fees in any designated country results in the patent lapsing in that specific country, but it remains valid in other countries where fees are paid. Additionally, Supplementary Protection Certificates (SPCs) are available in Europe to extend the protection of certain pharmaceutical and agrochemical patents beyond the standard 20-year term, compensating for regulatory approval delays.

**In addition**, in the United States, a federally registered trademark can potentially last indefinitely, but it is contingent on continued commercial use. Trademark owners must file Declarations of Use under Sections 8 and 9 of the Lanham Act at regular intervals—specifically, between the 5th and 6th years after registration, and every 10 years thereafter. Failure to demonstrate active use can result in cancellation of the registration.

In the European Union, trademark rights are similarly renewable indefinitely, if renewal fees are paid every 10 years. However, while proof of use is not required at the time of renewal, an EU trademark (EUTM) may be revoked if it is not put to genuine use within five years of registration or if use ceases for five consecutive years. See Article 58 of Regulation (EU) 2017/1001. Proof of use must occur within the EU, and even minimal commercial exploitation may be sufficient to maintain rights, depending on the context and scale of the market.

**What is more**, the procedural frameworks governing the registration and enforcement of intellectual property rights between the United States and the European Union are divergent.

- Registration Procedures

The United States Patent and Trademark Office (USPTO) is responsible for the examination, registration, and maintenance of both patents and federally registered trademarks. The USPTO conducts substantive reviews of applications and allows for third-party challenges through procedures like oppositions (trademarks) and inter partes review (IPR) or post-grant review (PGR) (patents), handled by the Patent Trial and Appeal Board (PTAB).

The European Patent Office (EPO), established under the European Patent Convention (EPC), grants European patents through a centralized procedure. However, the EPO is not an EU institution; after patents are granted, they must be validated and enforced in each designated country unless the Unitary Patent system applies. For trademarks and design rights, the European Union Intellectual Property Office (EUIPO) administers EU Trademarks (EUTMs) and Registered Community Designs (RCDs). These provide unitary protection across all EU Member States, simplifying the process for applicants with operations in multiple countries. Each

of these institutions has its own administrative appeal mechanisms, such as the Boards of Appeal at both the EPO and EUIPO.

- Dispute Resolution and Enforcement

In the United States, disputes related to IP—such as infringement, validity, or breach of licensing terms—

are typically adjudicated in federal district courts, as intellectual property falls under federal jurisdiction. Specialized judicial bodies exist as well, including:

- The Court of Appeals for the Federal Circuit (CAFC) hears all appeals in patent cases.
- The Patent Trial and Appeal Board (PTAB) handles administrative challenges to granted patents.

In the European Union, enforcement and litigation have traditionally been decentralized, with disputes handled by national courts under national law—even when rights are granted at the EU or European level. For example, an infringement of an EU trademark is generally heard by designated national courts that serve as EU trademark courts within each Member State. However, the recent establishment of the Unified Patent Court (UPC), started to operate in 2023, marks a major step toward centralized patent litigation in Europe. The UPC has exclusive jurisdiction over Unitary Patents and European patents, allowing for pan-European injunctions, damages, and validity decisions. This system is expected to reduce division and improve efficiency in patent enforcement across participating EU Member states.

**To further illustrate**, copyright licenses may be granted on either an exclusive or non-exclusive basis, with exclusive licenses requiring a written agreement signed by the copyright owner under 17 U.S.C. § 204(a) in the United States. Non-exclusive licenses generally cannot be assigned unless the license expressly provides for it. U.S. law also offers limited protection for moral rights through the Visual Artists Rights Act (VARA) of 1990, which applies only to certain works of visual art and grants authors rights of attribution and integrity, even though these rights are often waivable.

By contrast, most European jurisdictions, particularly France and Germany, recognize strong and enduring moral rights that are typically non-waivable and permanent. These include the right to claim authorship, the right to object to derogatory treatment of the work, sometimes the right to withdraw the work from the public. As a result, even when economic rights are licensed or assigned, moral rights remain with the author, potentially limiting the scope and enforceability of certain licensing agreements. This divergence in approach has a significant impact on cross-border copyright licensing, requiring careful contractual drafting to avoid unintended limitations.

When it comes to antitrust and abuse safeguards, IP licensing agreements are reviewed under the Sherman Act and the FTC Act to ensure they do not harm competition in the United States. The DOJ and FTC have made clear that IP rights do not exempt holders from antitrust rules. While most licensing is considered competitive, agreements involving price-fixing, market division, or tying can be illegal if they unreasonably restrain trade or create monopolistic outcomes.

In the European Union, IP licensing is governed by Articles 101 and 102 TFEU, which prohibit anticompetitive agreements and abuse of dominance. The Technology Transfer Block Exemption Regulation (TTBER) offers a safe harbor for compliant licensing deals. The TTBER Guidelines also list hardcore restrictions, such as, fixing prices or dividing markets that make the exemption unavailable.

As it is worth noting enforcement and litigations costs, intellectual property enforcement in the United States is widely recognized as litigation-intensive and costly. IP disputes are typically brought in federal courts, where plaintiffs may seek actual damages, statutory damages, especially in copyright cases under 17 U.S.C.

§ 504 and injunctive relief. The discovery process is broad and can be burdensome, contributing significantly to litigation costs. Under the U.S. Rule, each party usually bears its own legal fees, but fee-shifting is possible in some exceptional cases. See Octane Fitness, LLC v. ICON Health & Fitness, Inc., 572 U.S. 545 (2014), holding that the Supreme Court clarified that attorneys' fees may be awarded in "exceptional" patent cases, giving courts broader discretion under 35 U.S.C. § 285.

Enforcement of intellectual property rights in the European Union is primarily governed by the Enforcement Directive (Directive 2004/48/EC), which aims to unify civil remedies across Member States. Remedies available in national courts include injunctions, damages, and account of profits. Despite, enforcement procedures, evidentiary rules, costs, and access to discovery, still vary significantly between countries due to differing civil law traditions. Compared to U.S. practice, discovery is generally narrower and less adversarial in most EU jurisdictions. While the directive provides a minimum level of protection, the degree of procedural formality, speed of proceedings, and availability of fee recovery depend largely on national laws of Member states.

**Besides**, in the United States, compulsory licensing of intellectual property—particularly patents—is rare and often politically controversial. While U.S. law does not have a broad, codified framework for compulsory licensing like some other countries, there are limited statutory mechanisms that can result in forced licensing. One such mechanism exists under 28 U.S.C. § 1498, which allows the federal government to use patented inventions without the owner's permission, provided it pays reasonable compensation. Though this provision is not technically called a compulsory license,

it functions similarly.

In contrast, the European Union permits compulsory licensing through national laws of its Member States, and many have established statutory provisions allowing such licenses in specific circumstances—particularly in the pharmaceutical or public interest sectors. These include situations where a patented invention is not being adequately exploited, or where it is necessary for public health, national emergencies, or anticompetitive conduct. For instance, Huawei Technologies Co. Ltd v. Conversant Wireless Licensing SARL case involved the licensing of standard-essential patents (SEPs) and the conditions under which a patent holder can seek injunctions against alleged infringers considering FRAND (Fair, Reasonable, and Non-Discriminatory) licensing obligations. Conversant, a patent licensing company, had sued Huawei in German courts for patent infringement and sought an injunction. Huawei challenged the action, arguing that Conversant had not offered FRAND terms and therefore could not seek injunctive relief under EU competition law. The German court referred questions to the CJEU, asking whether Conversant's behavior complied with obligations derived from the earlier landmark Huawei v. ZTE case (Case C-170/13). The CJEU reaffirmed that SEP holders bound by FRAND commitments must follow a specific protocol before seeking injunctive relief, including alerting the alleged infringer and making a concrete licensing offer.

The Court emphasized that licensees also have obligations, notably to diligently respond to offers and propose FRAND counteroffers if they reject the licensor's terms. The ruling clarified that national courts must assess whether both parties negotiated in good faith and whether the SEP holder's request for an injunction is abusive under Article 102 TFEU . In broader implications, this case continues to shape the licensing environment for SEPs in the EU, particularly in the telecommunications and tech sectors. It reinforces a balanced approach that protects patent rights while guarding against their misuse to block market access. Companies involved in IP licensing, especially of SEPs, must account for negotiations carefully to show compliance with FRAND obligations.

Germany allows compulsory licensing under §24 of the German Patent Act (PatG) . France, Italy, and other Member States have similar provisions in their patent laws. Compulsory licensing is also recognized under TRIPS Article 31, which applies to both the U.S. and EU as WTO members and has been reflected in

EU-level policy discussions. Although not codified at the EU level, the use

of compulsory licenses in Europe is more formally structured and legally accessible than use of those in the United States.

## CONCLUSION

In conclusion, provided looking at policy perspectives of both regions, the United States employs a market-oriented framework that views intellectual property primarily as a mechanism to encourage private investment and stimulate economic development. In this system, licensing practices are largely influenced by commercial norms and judicial precedent. In contrast, the European Union prioritizes achieving a balanced approach that integrates the promotion of innovation with consumer protection and cultural policy considerations. Consequently, licensing within the EU tends to be more structured and subject to comprehensive regulatory supervision. Although federal laws of the United States establish the underlying structure for the recognition and enforcement of IP rights, it is characteristic that the formation and interpretation of licensing agreements are primarily governed by state contract law, including both judicial decisions and statutory provisions. It can also be witnessed that the European Union's approach to intellectual property licensing is marked by a strong reliance on codified legal norms, formal registration processes, and a significant level of regulatory standards achieved through EU directives and regulations. However, the system also introduces more rigorous procedural requirements for drafting, executing, and enforcing licenses compared to the relatively flexible United States model.

This scientific article attempted to discuss a comprehensive comparative analysis of intellectual property licensing frameworks in the United States and the European Union addressing foundational legal principles, structural differences in licensing regimes, key doctrinal and regulatory distinctions, and enforcement mechanisms within both jurisdictions. By highlighting both the convergences and divergences between the United States and the European Union legal systems, this study assessed how Intellectual Property licensing practices are deeply influenced and in turn influence the broader economic and legal landscapes in each region.

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