



WORLD TRADE ORGANIZATION

Intellectual Property Rights Update

By Ben Leibowicz

Introduction

The World Trade Organization (WTO) defines intellectual property (IP) rights as “the rights given to people over the creations of their minds.” These creations include practical inventions, artwork, genetic modifications, original designs, technology, intellectual ideas, scientific discoveries, pieces of music, and other broad categories of intangible intellectual products. Some common types of IP protections are **copyrights**, **patents**, and **trademarks**. Such rights grant creators the exclusive right to their IP and a share of the profits earned by others who use their creations. The rationale for IP protection is simple; guaranteeing creators the economic benefits of their intellectual products stimulates progress by providing an incentive to innovate.

While legal IP protections are relatively easy to enact and enforce within a single nation, enforcement becomes quite difficult across borders in the international community, especially with the rapid increase in the availability of the internet. As the forces of globalization continue to lead the world into an international economy, cohesive intellectual property rights legislation becomes ever more necessary. However, doing so is a complex task that requires compromise and an understanding of the diverse viewpoints of WTO member nations.

Summary of the Problem

Currently, the central international document on intellectual property rights is called the Trade Related Aspects of IP Rights Agreement (TRIPS). The TRIPS Agreement was developed in 1994 and is still in effect today. TRIPS requires all WTO members to maintain a minimum level of national legislation protecting IP rights, and the agreement also enforces an international system for mediating IP disputes.

The debate over TRIPS is primarily a conflict between the developed and developing world. Nations of the developed world generally support TRIPS. The cutting-edge industries and research facilities in developed nations benefit from IP protections in two ways: first, through royalties that must be paid by foreign industries wishing to use the protected technologies and ideas, and second, by prohibiting foreign entities to produce or use the technologies. Since developed nations innovate at a much higher rate than developing nations do, TRIPS helps ensure that these more technologically advanced nations retain their economic and

Copyright—*the exclusive right to make copies, license, and otherwise exploit a literary, musical, or artistic work, whether printed, recorded, filmed, etc.*

Patent—*the exclusive right granted by a government to an inventor to manufacture, use, or sell an invention for a certain number of years.*

Trademark—*any name or symbol used by a merchant in order to designate his/her goods and to distinguish them from others; a proprietary term that assures its exclusive use by its owner.*

trading influence.

By contrast, the developing world is mostly opposed to TRIPS. Developing nations argue that international IP rights hinder economic progress domestically by restricting access to technology and knowledge that could help these nations develop more rapidly. This argument is particularly compelling in cases where the IP protections inhibit dealing with a humanitarian crisis. This mostly applies in the medical and agricultural fields, where many people feel that access to already existing technologies could have a dramatic and near immediate effect on both the healthy and food supply of millions of individuals in the developing world.

The WTO is often seen as a body dominated by its more technologically advanced member nations, and due to the influence of wealthy nations, the TRIPS agreement defines current IP policy. Nevertheless, developing nations have made their opinions known. The Doha Development Agenda (DDA) of 2001 constituted an attempt by developing nations to limit the obstacles presented to them by TRIPS. Among other things, the agenda allows for a more flexible interpretation of TRIPS that makes concessions for situations in which an infringement of IP rights could help ameliorate a massive emergency such as an epidemic or nationwide famine. Since 2001, however, progress has been slow. The line between the need to protect IP rights globally to encourage innovation and the ethical desire to grant all people the benefits of intellectual advances remains ambiguous.

Recent Developments

Geographical Indications

Recent WTO discussions about TRIPS have addressed the concept of **geographical indications (GIs)**. A GI is a name, symbol, or phrase placed on a product to inform consumers of its location of origin. They are particularly important when a certain locale is associated with a reputation for high quality. For example, apples might have stickers informing consumers that they were grown in the US state of Washington, and a sparkling wine that bills itself as champagne lets consumers know that it was produced in a particular region of France. Often, however, geographical location becomes synonymous with product name. Interesting questions of international IP rights concerning GIs can arise; can we call a cheese Parmigiano-Reggiano cheese if it is produced in a region other than northern Italy but features all the usual characteristics? Or must we refer to it by some similar generic name such as Parmesan cheese?

Under current TRIPS policy, wines and spirits are subject to a higher level of GI protection than other products. A key question being debated now is whether or not this higher level of protection should be

Geographical Indication (GI)—*a description placed on a product to inform the consumer of its place of origin.*

extended to other products, such as cheeses, ceramics, or coffee. Developing nations, especially those that are known around the world for producing fine versions of such goods, would look favorably upon an extension of GI protection to these products. The current special treatment of wines and spirits mainly benefits developed nations that are recognized for producing wines and spirits of high quality, such as France, Italy, and the United States. Extending GI protections to other goods could spread the benefits of this type of IP protection more evenly.

Disclosure of Traditional Knowledge

Developing nations recently proposed an amendment to TRIPS that would require patent applicants to disclose the country of origin of natural resources and traditional knowledge used in their inventions. Doing so would present concrete evidence that the patent applicant received prior consent to access those resources. The leading advocates in the push for disclosure to be included in TRIPS have been Brazil and India, whose rich traditions of medicine have led modern-day researchers to many lucrative discoveries. The desired amendment would prevent so called **bio-piracy**. These measures would allow the nations with valuable genetic resources and cultural practices to reap the benefits of the advances that developed nations profit from. It would help ensure more responsible handling of genetic material in accordance with the **Convention on Biological Diversity**. Under this protocol, nations or ethnic groups would receive just compensation for their traditional know-how, just as if they had made “new” discoveries under IP protections.

Following the discussions within the WTO, many developing nations, including China, coordinated amongst one another to modify their patent laws to require this type of disclosure. However, most developed nations, such as the United States, Japan, and European Union members, have not yet incorporated disclosure into their legislation. They counter that this would open a dangerous path in IP protections, because it would be difficult to draw a line when traditional knowledge becomes subject to IP protections. If Brazil can collect royalties for medicines derived from its traditional practices, can China collect royalties for all gunpowder, which was invented there long ago?

Recent WTO TRIPS Case Between the U.S. and China

In late January 2009 the WTO issued a decision on an important case involving intellectual property rights complaints issued by the United States against China. The first issue raised by the US was that Chinese IP protections were not strong enough or consistent enough to meet the minimum requirements set forth by TRIPS. The second issue involved Chinese border policy outlining procedures for handling confiscated goods. Under Chinese policy, customs officials can choose to

Bio-piracy—the unauthorized appropriation of indigenous traditional biomedical knowledge or the use of indigenous genetic resources by an outsider without proper compensation.

Convention on Biological Diversity—an international treaty adopted in Rio de Janeiro in 1992 with three main goals: preservation of biodiversity, sustainable use of biological resources, and fair sharing of the benefits of genetic resources.

donate, auction, or sell confiscated counterfeit goods to the rights holder, options that the United States opposed as a violation of TRIPS. Lastly, the United States alleged that China's IP enforcement system, which features a low threshold for enforcement, makes prosecution impossible in some important cases and is thus a breach of TRIPS.

The WTO decision supported Chinese policy on two of the three issues. The WTO agreed with the United States claim that Chinese copyright protection must be expanded to meet the standards of TRIPS. The ruling declares that China cannot deny copyright protection to all works that are considered unconstitutional or immoral. On the other two issues, which are likely more significant, the WTO sided with China. It ruled that China is not in violation of TRIPS by allowing its customs official to donate confiscated counterfeit goods to the Red Cross, auction them, sell them to the rights holders, or destroy them. It also did not find sufficient evidence of significant IP cases that could not be tried due to the minimum threshold for enforcement policy, and therefore chose to uphold this policy.

Focus of the Debate

The primary focus of this debate will be to engineer an effective and comprehensive international intellectual property rights framework that satisfies both developed and developing nations. An adequate framework will preserve IP rights as an incentive for innovation while providing enough room for developing nations and their populations to benefit from discoveries and continue to advance. This may require a total repeal of TRIPS and its replacement with a new policy, a reform of TRIPS that incorporates the ideas of the DDA, transfer of **jurisdiction** over TRIPS and international IP rights to the UN, a restructuring of the WTO to grant more power to developing nations, cooperation with other organizations and the seeking of external advice, some combination of the above, or some other solution altogether. It is up to you, as the representatives of the member nations of the WTO, to develop a solution to this issue.

Jurisdiction—*the power or right to exercise authority over something.*

Questions for Policymakers

How crucial are IP rights as an incentive to innovation and creation? At what point does a crisis become serious enough to warrant infringement of IP rights for the good of a large population? What responsibility do the developed nations have to share the benefits of their work with developing nations? How can we effectively enforce IP rights on the international stage? Can we make distinctions between luxury goods like artwork and designer clothing and necessities like

medications in IP policy? What new challenges might future developments present for IP legislation, in the same way that the Internet and genetic modification have prompted recent debate? How can the WTO be restructured to give more equal power to developing and developed nations?

Conclusion

Since its establishment, TRIPS has created a **rift** between the developed and developing world. Striking a balance between IP policy that is strong enough to encourage innovation, and yet also loose enough to allow the developing world to benefit from global progress, has been difficult. It is your job, as the representatives of the member nations of the WTO, to revise international IP rights policy to make it acceptable to all nations. The forces of globalization have created a truly worldwide economy, and it is imperative that international IP rights legislation be effective.

Rift—a sense of division or estrangement.

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