
THE IMPACT OF GLOBALIZATION ON INTELLECTUAL PROPERTY AND IP LAWS

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ABSTRACT

Globalization of IP laws and practices has had a severe impact on innovation, trade and equal access of knowledge and other resources and has changed the very face of global trade as well as the mode of operations in which many societies work. Central to this change was the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) that was put in effect to standardize domestic laws on IP within the member countries, thereby facilitating cross border trade. Though TRIPS has managed to eradicate certain legal uncertainties in international business transactions that have existed over the years, it further escalated the struggle between the developed and developing nations. Being the custodians of majority of the innovational resources and all the technological advancement and development, the developed nations favor and advocate strict IP protection since they perceive them to have the capabilities to defend the intellectual output and stimulate its economic topping. Most of the developing world, on the contrary, is finding it hard to meet the two requirements of innovation and attention to health and economic priorities. All these varying views add to the discussion that makes the enforcement of IP rights even more complex especially in the digital era during which enforcement has always been a challenge because of the fast paced change in technology. The accessibility issues become especially visible in the pharmaceutical industry, where life-saving medications become very expensive when IP rights are enforced. The cultural implication of traditional knowledge appropriation, which arises as a consequence of utilizing indigenous knowledge and other expertise and assets by corporations without acknowledgement or payment, should be noted too. This paper examines these issues, advocating for a more inclusive and adaptive global IP system that not only promotes innovation but also ensures equitable access to knowledge and preserves cultural heritage for future generations.

Keywords: Globalization, Intellectual Property, International Conventions, Digital Economy, Traditional Knowledge

1. INTRODUCTION

IP rights have been considered to be the foundation of international commerce and innovation, where the IP rights themselves are the core of the prospects of economy development as well as cross cultural interaction. The Uruguay Round of negotiations established the TRIPS Agreement that was a major effort to standardize intellectual property rights. TRIPS sought to trade liberalization and encourage innovation through the definition of minimum requirements over patent, copyrights, and trademarks protection. However, it has also brought up fear on its impact on the developing countries. The proponents argue that strong IP protection promotes investment and innovation and the critics cite the economic development expenses of such systems on the lower and middle income countries. This paper discusses the implications of TRIPS on innovation, trade, public health and cultural preservation before examining some benefits and costs of TRIPS Agreement to developing countries. The study aims to provide an in-depth analysis of the TRIPS Agreement in influencing its place in international IP landscape by exploring the tensions between global harmonization of IP rights with local developmental needs. It highlights challenges of accessibility to life saving medicines, safeguarding traditional knowledge and adapting to new technologies such as artificial intelligence. The points from these discussions highlight the necessity of a more balanced approach to IP governance that caters to the interests of all parties involved.

2. THE GLOBALIZATION OF IP LAWS & PRACTICES

2.1 Harmonization Efforts

The TRIPS Agreement in 1994 was one of the outcomes of negotiation of the Uruguay Round of GATT, and it was a turning point of intellectual property (IP) law harmonization globally. Prior to the rise of TRIPS, nations were faced with varying IP governments that led to international trade and commerce being a lot difficult. The TRIPS Agreement established the minimum standards of IP protection i.e. patents, copyright and geographical indications, trademarks and industrial design that resulted in less ambiguity in international trade because of a more organized law that defines IP ownership and rights to innovation.¹

¹ C.M. Correa, "Intellectual Property Rights, the WTO, and Developing Countries: The TRIPS Agreement and Policy Options", Zed Books Ltd, (2000)

However, the TRIPS Agreement also created a significant divide between the developing and developed countries. Countries with developed economies generally support more stringent IP protections due to their significant IP holdings, and reliance on enforcement. They claim that without strong IP rights, innovation and economic growth are hindered, since a significant proportion of innovations depend on technological research and development.² On the contrary, many developing countries have repeatedly called for flexibility under TRIPS to fulfill pressing socio-economic demands. For instance, those countries often contend that overly strong IP protections can limit access to essential medicines and hinder transfer of technology required for confronting public health issues and pursuing sustainable development. This perpetual battle signals a greater discussion in our society over tension between the right to protect intellectual property and the right to receive essential products and services.

The TRIPS Agreement has therefore not only prepared the ground for a more uniform world of IP but also revealed both tattered and uneven complexities in relation to that world economy. The follow-up discussions in the World Trade Organization (WTO) and other multilateral forums continue, although it is hoped a compromise can be struck that will provide adequate protection for intellectual property without preventing developing countries at different levels of development from meeting their health challenges.

2.2 Role of International Organizations

International organizations such as the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) play a key role in mediating the relations between national systems of IP and establishing some common standards. WIPO is the global forum for intellectual property policy, services, information and cooperation, headquartered in Geneva and established in 1967. Likewise, the WTO was established in 1995 to regulate multilateral trade and trade-related matters of intellectual property rights through the TRIPS Agreement, which lays down certain minimum international standards of IP protection between countries. Given the continued significance of IP rights in a globalized, innovative and competitive world, such standardization is needed.

However, whether those institutions strike the right balance in favor of world interests remains an open question, especially when there are differences in technology capability and innovation

² K.E. Maskus, "Intellectual Property Rights in the Global Economy", Institute for International Economics, (2000)

between countries. The existing IP systems, critics contend, favour developed countries that have advanced scientific and technology infrastructures, as well as established technological human resources capable of innovation. This inequality could prevent developing nations from being able to participate in the world market, as they need to be able to comply with challenging IP legislation that does not necessarily fall into their best interest based on their respective situation or stage of development.

Secondly, the very enforcement mechanisms that WIPO and WTO provide themselves are said to be of limited utility, since overly restrictive IP laws usually affect access to medicines, agricultural innovation and use of traditional knowledge. Such disparity calls into serious question the validity and fairness of international norms regarding intellectual property, as well as its contribution to sustainable development.³

The rapid pace of technological and digital economic development that countries deal with today, require a more equitable and flexible structure of IP governance guided by national interests. Such a method might make sure that worldwide IP systems support access equity to progress while enabling an avenue for innovation and technology to flourish at the global level.⁴

3. CHALLENGES IN ENFORCEMENT

3.1 Cross-Border Piracy and Counterfeiting

As such, globalization has furthered problems related with piracy and counterfeiting, as trade in counterfeit goods accounts for vast percentages of global trade. According to a report from the OECD (Organization for Economic Cooperation and Development), in the year 2016 the percentage of international trade in counterfeit and pirated products have accounted for roughly 3.3% of total world trade, and this number again, denotes severity of this issue.⁵

Moreover, IP protection faces even more challenges with certain jurisdictions seeing only limited enforcement. According to the WTO, many countries are parties of treaties that are intended to protect IP right. However, improper or inconsistent enforcement of IP laws can

³ K.E. Maskus, "Intellectual Property Rights in the Global Economy", Institute for International Economics, (2000)

⁴ Susan Aaronson, "Rethinking Intellectual Property Rights", SSRN Electronic Journal, (2012)

⁵ OECD, "Trends in Trade in Counterfeit and Pirated Goods", (2019)

leave gaps through which counterfeiters pass. The WTO has observed that despite the fact most countries are signatories to agreements designed to protect IP rights, differences in legislation and enforcement practices leaves gaps that counterfeiters exploit.⁶

In addition to that, online marketplaces and ease of international shipping has allowed counterfeit goods a wider audience, meaning the control brands could expect over use of their product or intellectual asset is becoming ever more difficult to secure. These dynamics remain a substantial threat to global innovation, economic development, and consumer safety.⁷

3.2 Digital Economy and IP

Digital platforms have magnified the problem of IP enforcement in the global marketplace by a significant amount. This is because of the internet, which has flooded us with unprecedented access to a variety of content. This has been raising mass concerns over copyright infringement, illegal streaming, and piracy of data online. According to a published report by the U.S. Chamber of Commerce, financial losses attributed to online piracy amount to billions of dollars in the United States alone. Such a figure translates to tremendous effects of the poorly regulated digital content distribution.⁸

Territorial legal frameworks typically rely on laws specific to the nation and do not provide the enforcement mechanisms needed to address cross-national issues. Especially in the case of illegal streaming services, we have criminals hiding behind more than one border and operating from a country with lenient laws which makes enforcement difficult and complicated.⁹ There is a need for more creative legal solutions and more collaborative international treaties. A case in point is the United States-Mexico-Canada Agreement (USMCA). This deal included measures to strengthen IP protections in the digital arena which is a step towards a more modern and comprehensive form of frameworks.¹⁰ Thus, it requires not only reforms of the traditional laws but also cooperation from the international levels, as well as an honest assumption of the technologies for the proper protection of rights of creators.

⁶ WTO, "Intellectual Property: Protection and Enforcement", (2020)

⁷ International Chamber of Commerce, "The Economic Impacts of Counterfeiting and Piracy", (2021)

⁸ U.S. Chamber of Commerce, "The Economic Impact of Counterfeit and Pirated Goods", (2019)

⁹ Nuour Walia, "Challenges of Copyright Protection in the Digital Age: A Study", *International Journal of Renewable Energy Exchange*, (2023)

¹⁰ David A. Gantz, "USMCA Provisions on Intellectual Property, Services, and Digital Trade", *Arizona Legal Studies*, (2020)

4. EMERGING PROBLEMS

4.1 Innovation and Accessibility

Globalization has doubled the conflict between inducing innovation and ensuring universal access, particularly for the pharmaceutical industry. Enforcement of strong intellectual property protections by multinational corporations to maximize profits is more problematic for public health than ever in low- and middle-income countries. Sometimes, this IP protection that is mostly backed by international agreements TRIPS, leads to extremely high prices for lifesaving medicines and creates a shortage of critical care. For instance, Antiretroviral drugs, which are essential in the treatment of HIV/AIDS, remain unaffordable to many in low-income countries because patent protections keep competitors from creating generic equivalents.¹¹ According to WHO remarks, it is a paradox in which innovations designed to improve health and quality of life is still beyond the reach of those who need them most.¹² In addition, the recent discussions about COVID-19 vaccine access illustrate this dilemma. Several nations have called for waivers on specific IP protections to enable wider access and manufacturing of vaccines. This kind of impasse puts great emphasis on rebalancing the providing of incentives to pharmaceutical innovation through IP rights while ensuring access to medicine in a fair manner for all around the world.¹³

4.2 Cultural Appropriation and Traditional Knowledge

It therefore proves to be the real challenges of appropriating traditional knowledge and culture in an interconnected world in which the transnational circulation of ideas and cultural objects has become more pronounced. The issue is highly problematic towards indigenous people who have witnessed their traditional knowledge and heritage used by multinational companies without their permission. Such laws provide insufficient protections for indigenous people to protect their unique practices, traditions, and innovations from being commercially exploited. WIPO defines that traditional knowledge and cultural expressions are comprised of elements that form an essential part of the identity and culture of indigenous people, hence WIPO

¹¹ Tara Leevy, "Intellectual Property and Access to Medicine for the Poor", *AMA Journal of Ethics*, 8(12), (2006)

¹² World Health Organization, "Access to Medicines: A Global Perspective, (2019)

¹³ Hannah Brennan, et al. "A Human Rights Approach to Intellectual Property and Access to Medicines.", Yale Law School and Yale School of Public Health Global Health Justice Partnership Policy Paper No. 1, (2013)

acknowledges such a need for protection.¹⁴ Furthermore, Article 31 of the UN Declaration on Rights of Indigenous Peoples (UNDRIP) emphasizes that indigenous peoples have rights to maintain, control, protect and develop their cultural heritage. Cultural appropriation can take form in the misappropriation and unlicensed use of indigenous cultural expressions in fashion, music, arts and traditional health practices with no financial benefit to original owners usually leaving them at a large economic disadvantage where an entire culture is being diluted. Critics argue that the current IP frameworks, which are mostly oriented to protect individual ownership rather than collective rights, do not really solve this problem.¹⁵

5. THE FUTURE OF IP IN A GLOBALIZED WORLD

5.1 Technological Advancements

The intersection of Artificial Intelligence (AI) and other emerging technologies are posing unique challenges to IP protection. With AI being more and more sophisticated, this leads to a question about ownership of the work created. For example, there arises a question about the copyright ownership of a work produced entirely by AI. There is no clarity on whether the developer or the user gets the ownership. Such ambiguity has spurred continued arguments on the part of legal scholars and lawmakers over whether current IP law should be reformed to be more in line with the nature of AI-made content.¹⁶ These advancements present challenges for policymakers attempting to keep IP laws relevant and fair. Achieving the right equilibrium between encouraging innovation and safeguarding creator's right is a daunting challenge, especially in this fast-paced era of technological advancement. According to WIPO, the implications of such technologies on IPR and the rights of consumers require adaptable legal frameworks and therefore global cooperation in order to protect both.¹⁷ Such adaptive measures will demand continued collaboration among the stakeholders with technologist, legal experts and policy makers to devise proactive solutions in recognition of how AI has transformed IP.

¹⁴ WIPO, "Traditional Knowledge and the United Nations Declaration on the Rights of Indigenous Peoples", (2016)

¹⁵ Jade Kouletakis, "Decolonising Copyright: Reconsidering Copyright Exclusivity and the Role of the Public Interest in International Intellectual Property Frameworks", GRUR International, Vol. 71, Issue 1, (2022)

¹⁶ Haochen Sun, "Redesigning Copyright Protection in the Era of Artificial Intelligence", 107 Iowa L. Rev. 1213, (2021)

¹⁷ WIPO, "Intellectual Property and Artificial Intelligence: WIPO Technology Trends 2021", (2021)

5.2 Inclusive Policy-Making

Global frameworks relating to IP should be inclusive and consider the perspective of developing countries and marginalized communities. This is especially important in a time when the gaps between who has access to knowledge, technology and cultural expression are ever expanding. The WTO and TRIPS Agreement has been criticized for its overly restrictive standards that are more suited to the industries and innovations of developed countries, at the potential expense of developing parts of the world who may wish to make use of their own resource. These inequities call for a reconsideration of agreements such as TRIPS to provide more flexibility in the public interest.¹⁸ For example, ensure that mechanisms like compulsory licensing, which allow countries to produce generic versions of patented medicines, could be more firmly established in order to address public health needs.¹⁹ Moreover, involving local stakeholders in decisions that affect their livelihoods might improve representation and ensure IP laws take into consideration the economic and cultural backgrounds of marginalized communities. Laws acknowledging traditional knowledge and creative expressions benefit the communities owning those forms of expression while also working to protect cultural heritage threatened by globalization.²⁰

Thus, the creation of a more globally equitable IP system is not just the morally correct thing to do but also makes practical sense for ensuring that all countries can contribute to and benefit from innovation and sustainable development. If global IP systems can be redesigned to be more inclusive, they can enhance the ability of marginalized populations to access, share and generate knowledge, therefore building a fairer global economy.²¹

6. CONCLUSION

The TRIPS Agreement has undoubtedly shaped the global IP framework, bringing coherence and structure to international trade and innovation. However, its implementation has exposed and, in some cases, exacerbated disparities between developed and developing nations.

¹⁸ Daniel J. Geravis “(Re)implementing the Agreement on Trade-Related Aspects of Intellectual Property Rights to Foster Innovation”, *The Journal of World Intellectual Property*, 12, (2009)

¹⁹ Ralf Boscheck, “Intellectual Property Rights & Compulsory Licensing: The Case of Pharmaceuticals in Emerging Markets”, *World Competition*, (2012)

²⁰ Freedom-Kai Phillips, “Intellectual Property Rights in Traditional Knowledge: Enabler of Sustainable Development”, *Environmental Law & Policy e-Journal*, (2016)

²¹ Robert M. Sherwood, “The TRIPS Agreement: Benefits and Costs for Developing Countries”, *International Journal of Technology Management*, 19, (2000)

Although robust IP protection has facilitated investment and technological development in the high-income countries, the same policies have been a major burden to the low-income and middle-income economies. These include lack of equal access to affordable medicine, weak implementation of IP regimes, and problems in exploiting of traditional knowledge to build economies. As the global IP landscape becomes very complex due to the digital economy and as well as the emerging technologies, it is imperative to reconsider and adjust TRIPS. The policymakers should also facilitate inclusivity to achieve an equitable world and this should begin by such actions like flexible licensing, sound public health protection and protection on traditional and indigenous knowledge. Multilateral institutions such as WTO and WIPO may assume a very important role in the realization of global collaboration to come up with an IP regime that not only meets the rewards of innovation but also promotes sustainable and equitable development. These challenges can be addressed through a solution based approach in order to achieve a balanced IP ecosystem so that trade and innovation becomes beneficial to the global community at large. Such reforms will enhance the economic growth of the developing world and establish a foundation towards a more equal and integrated world. Ultimately an amended TRIPS Agreement can be efficient in fostering innovations and human development globally.