

**Proceedings Symposium “A New Feudalism of Ideas?”  
Centre for Intellectual Property Policy & Management  
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Note: These proceedings are edited transcriptions of contributions drawing on notes taken by Julia Fallon and Gurminder Panesar (MA/LLM Intellectual Property Management). A special issue on the topic of the symposium is in preparation (eds. Martin Kretschmer & Peter Drahos).

**PAPER 2:**

**The Future of TRIPS at the WTO**

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P. Drahos took as his departure point the three possible scenarios suggested for discussion in the symposium:

1. Intellectual Property Feudalism;
2. Intellectual Property Retreat;
3. Intellectual Property Revolution.

The paper then asked whether there was evidence for thinking that one scenario was more likely than another.

It observed that TRIPS had become the object of networked campaigns of transnational activism. The campaign by Oxfam, MSF and Consumers International on access to drugs was discussed as an example of such campaigns. Developments within international organizations such as the WHO, the World Bank and the European Commission which reflect a more balanced approach to intellectual property rights were also discussed.

As against the evidence for scenario 2 the continued ratcheting up of intellectual property standards by means of bilateral treaties was discussed. In particular the TRIPS plus effects of the US Jordan Free Trade Agreement were analysed. The TRIPS plus features of the Jordan FTA, it was pointed out, include the following:

- the requirement that each Party give effect to UPOV and that in the case of Jordan it ratify UPOV within 12 months;
- the grant to authors, performers and phonogram producers of an exclusive importation right;
- the regulation of the government use of computer software;

- narrowing the grounds of exclusion from patentability (basically, the grounds of exclusion in Article 27.3(b) of TRIPS are omitted);
- a redrafted compulsory licensing provision which confines the use of compulsory licences to specified cases rather than as in the case of TRIPS, placing conditions on the use of compulsory licences. (The specified cases are for remedying an anti-competitive practice, use in public non-commercial contexts, national emergencies and other cases of extreme urgency, and the failure to meet working requirements.); and
- an obligation to provide for an extension of patent term to compensate patent owners for regulatory delays in being able to exploit the patent.

The impact of the most favoured nation principle in TRIPS on bilateral standards was analysed. It was pointed out that the MFN principle in TRIPS when combined with bilateral agreements will work in favour of the two leading exporters of intellectual property in the world, the US and the EU. Whenever the US negotiates an agreement with a WTO developing country member the MFN principle will see the EU gain the benefit of standards that the US obtains. The same is true for the US when the EU obtains gains in a bilateral agreement dealing with intellectual property. It is also true that if the EU and the US between them negotiate enough bilateral agreements containing TRIPS plus standards, those standards will become for practical purposes the new minimum standards from which any future WTO trade round will have to proceed.

The paper concluded by suggesting that there was a global IP ratchet in place that was being driven by the US and EU. On this line of analysis scenario 1 was the more likely scenario.

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