
Foreword

In 2000 the (then) Institute for International Economics kindly published this volume's predecessor, titled *Intellectual Property Rights in the Global Economy*. In that book I tried to place before interested readers the basic proposition that intellectual property rights (IPRs) were a critical element of innovation and trade policy that deserved far greater attention from international and development economists. The book also had a substantial policy focus, coming in the wake of the recent conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) at the World Trade Organization. It offered largely speculative analysis of how the new regime of required IPR standards might affect economic development prospects and how reforming nations might best manage their transformations. The book ended on a largely optimistic note, suggesting that a globalized regime could, if appropriately complemented by other policies, materially improve the functioning of international trade in technology and information.

Over ten years have passed and now seems a propitious time to bring out a completely new volume that both analyzes the period since TRIPS and offers further policy insights. Things have changed considerably in the last decade or so, in a number of important dimensions. First, ten years ago the economics literature remained thin and there were fewer aspects of IPRs and trade about which we had solid evidence than there were gaping holes in our understanding. Fortunately, since that time economic analysis has deepened and broadened considerably, offering new evidence and fresh insights into the major roles and significant impacts of IPRs in the global economy. Trade economists certainly now understand that we need to go beyond simulating the effects of basic tariff cuts and focus more attention on fundamental regulatory changes, which may well be more powerful than trade liberalization. Analysts of intellectual property rights have been at the forefront of this trend.

Several examples could be mentioned but two will make the point. One is that several trade economists have developed novel models explaining the effects of parallel imports (merchandise traded legally but without the authorization of the owner of the relevant IPRs) on prices, welfare, and innovation. These insights have direct implications for understanding the likely outcomes of liberalizing such restrictions on reimportation. Another is that economists have carefully studied the reactions of individual multinational firms to changes in patent rights around the world. Results of such investigations are considerably more informative than those of cross-country regressions, which were the standard of evidence available ten years ago.

A second massive change is that IPRs have become the major coin of the realm in trading goods and technologies across borders, whether through goods, investment, licensing, or, especially, over the internet. At least among the developed economies—though increasingly also in such major emerging-market economies as Brazil, India, South Korea, and China—inventive firms and creative interests rely increasingly on their ability to control production and distribution in order to earn profits. In chapter 1 I refer to this “new ownership economy” and sketch out some major implications. Among these are the elucidation of new and expanded forms of intellectual property, a massive expansion of global patenting, and the emergence of complex interrelationships among intricate technologies, all of which require policy attention. Further, digital content providers desire to sell their products globally but run inevitably into problems of unauthorized downloading and use, which in itself may sometimes be a form of creativity worth nurturing. Perhaps most devilish, the amount of copyright piracy and trademark counterfeiting in global trade has grown apace, raising a number of strategic policy issues.

A third, and fundamental, change has been the growing realization that IPRs have numerous and complex relationships with other forms of public policy, such as providing essential medicines to poor patients, deploying new and locally effective green technologies to improve soil conditions or reduce greenhouse gas emissions, and sustaining widespread access to scientific knowledge. Opinions about these interfaces are contentious and strongly held, with elements of civil society often arguing that IPRs should be severely restricted in scope in order to expand access and reduce prices and practitioners countering that IPRs are essential components of that very access. There are no easy answers to such questions, though economic analysis can offer important insights.

In this context, I really have four objectives in writing the present volume. The first is to take stock of what evidence may be gathered from new economic analysis of the roles IPRs play in innovation, investment, trade, licensing, and strategic behavior. This is the task of chapter 2, which documents the remarkable expansion of global IPRs in the period since TRIPS. An extensive review of the economics literature leads to the conclusion that these changes are having notable impacts on international technology transfer, at least toward larger emerging-market economies. There is also evidence of structural change

in emerging-market countries, associated with patent reforms, supporting growth in exports of sophisticated manufacturing goods. A number of qualifications to these positive results are drawn in that chapter, however, in the hope that further research will be inspired and undertaken. Economists interested in the trade, technological, and development aspects of IPRs should find this chapter worth reading.

A second goal is to assess where the global IPR system has moved since the implementation of TRIPS in 1995. There are numerous elements of these additional policy reforms, including the so-called TRIPS-Plus agenda in free trade agreements, new treaties struck at the World Intellectual Property Organization (WIPO), and a new emphasis on stronger enforcement measures among major trading partners. Equally, those concerned about the possibility that a reformed global IPR regime will damage prospects for economic development and limit the scope of public policy have mounted an effective push-back, expressed most forcefully in the new Development Agenda at the WIPO. These complex issues are the subject of chapter 3. Readers interested in the law and economics of international negotiations and how these policies affect international relations should find that review worthwhile.

A third objective is to offer a thorough assessment of how economists analyze critical issues in the global IPR system arising largely through private use of the regime. This is the subject of chapter 4, which focuses on several key issues. For example, global patent offices are awash in patent applications and need to improve means of collaborating in reducing their burdens. More importantly, there is a strong public interest in seeing these offices establish a global and accessible database of all patent applications to greatly increase the transparency and utility of the system. Another critical issue is how to encourage standard-setting organizations in industries with interlocking and overlapping technical standards to collaborate and increase access to their patented specifications. China's ambitious policy is both instructive and disconcerting in this context.

Yet another example is the question of exhaustion of IPRs, which determines the legal scope of parallel imports. Economists have uncovered a number of complexities here, making it a far more interesting subject than simple arbitrage might suggest. Chapter 4 also reviews the economics and law of protecting geographical indications, which are a particular form of intellectual property for high-quality goods from specific regions. In this case the economics are not particularly definitive, except where the attempts to protect involve asserting property rights against names already in the public domain. This discussion may therefore be of greater interest to legal scholars and policymakers. A subsequent section should be of considerable general interest, however, since it focuses on the thorny problems of selling digital goods to multiple countries in the face of considerable threats from downloading. After reviewing strategic—and often self-defeating—attempts to manage these problems on the part of content providers, I offer some thoughts on how the world's copyright infrastructure might be transformed to achieve a solution that is better all around.

A fourth objective is to confront, in chapter 5, the complex interfaces between the provision of public goods and the exclusive private rights established by IPRs. These are difficult questions and I generally limit the discussion to areas in which economic analysis is helpful. For example, although the policy issues are addressed, I say relatively little in the book about developing new forms of IPRs to protect traditional knowledge and cultural expressions, since it is hard to say much about the incentive effects of elucidating private rights in collective and long-standing knowledge.

Thus, after a review of the economics of compulsory licenses, variable patent standards, and other forms of “TRIPS flexibilities” I turn to four critical areas of public policy and their relationships with IPRs: public health and medicines, environmentally sound technologies, agriculture and preservation of the genetic commons, and global access to scientific knowledge. There are three primary points. First, by themselves IPRs can raise access barriers in each of these areas, though the evidence is mixed. Second, however, appropriately structured rights can be essential for supporting contracts to achieve meaningful and appropriate technology transfer.

Third, IPRs rarely can be counted on to achieve the optimal provision and distribution of public goods. Rather, they need to be a component of overall public and public-private strategies to expand resources for financing R&D, transferring technologies, and adapting them to local use. I offer some policy recommendations in these areas, ranging from practical ideas rooted in microeconomics to more abstract, though economically defensible, concepts such as a treaty for improving access to basic scientific knowledge. I hope that policymakers, NGOs, and economists alike will find these ideas challenging and worth thinking about deeply.

The world has reached a significant crossroads regarding the definition and use of intellectual property rights in the 21st century. Too often, IPRs are considered an end in themselves, whether as an imperfect measure of innovation performance or, more fundamentally, a strategic means of protecting the competitive positions of existing firms from new competition. It is time to recast intellectual property rights in their proper role as a means to several ends, including promoting innovation and creativity, diffusing new goods and ideas around the world, enhancing cultural opportunities, encouraging economic development, and even reducing poverty. All of these are possible with a forward-looking and expansive rebalancing of the global policy regime, the subject of the concluding chapter.

KEITH E. MASKUS
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