New Directions in International IP

Sean Flynn
American University Washington College of Law
Special 301 Listings 1989-2009

Post-TRIPS FTAs

- Australia
- Bahrain
- Chile
- Costa Rica
- Columbia
- Dominican Republic
- El Salvador
- Guatemala
- Honduras
- Israel
- Jordan
- Morocco
- Nicaragua
- Oman
- Panama
- Peru
- Singapore
**Committees**

- Industry Trade Advisory Committees
- Committee of Chairs of the Industry Trade Advisory Committees
- Aerospace Equipment (ITAC 1)
- Automotive Equipment and Capital Goods (ITAC 2)
- Chemicals, Pharmaceuticals, Health/Science Products and Services (ITAC 3)
- Consumer Goods (ITAC 4)
- Distribution Services (ITAC 5)
- Energy and Energy Services (ITAC 6)
- Forest Products (ITAC 7)
- Information and Communications Technologies, Services, and Electronic Commerce (ITAC 8)
- Non-Ferrous Metals and Building Materials (ITAC 9)
- Services and Finance Industries (ITAC 10)
- Small and Minority Business (ITAC 11)
- Steel (ITAC 12)
- Textiles and Clothing (ITAC 13)
- Customs Matters and Trade Facilitation (ITAC 14)
- Intellectual Property Rights (ITAC 15)
- Standards and Technical Trade Barriers (ITAC 16)

**Members**

**Intellectual Property Rights**

**ITAC 15**

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Representing Accessory Net Group, LLC

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Representing Biotechnology Industry Organization

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Entertainment Software Association

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Senior Vice President and Chief Compliance Officer  
Mylan Inc.

Mr. Thomas J. Thomson  
Executive Director  
Coalition for Intellectual Property Rights

Neil I. Turkewitz, Esq.  
Executive Vice President, International  
Recording Industry Association of America
COPYRIGHT POLITICS: SILICON VALLEY VS. HOLLYWOOD LOBBYING

The debate in Congress over how to crack down on pirated content found online pits tech companies against the entertainment sector.

TECHNOLOGY

* A member of NetCoalition, which opposes the copyright bills, but has not spoken out against the legislation.

SOURCE: CENTER FOR RESPONSIVE POLITICS

SARAH LAUREN BELL — POLITICO
ACTA

- Japan
- United States
- Canada
- European Union (27 countries)
- Switzerland
- Australia
- New Zealand
- Republic of Korea
- Singapore
- Mexico
- Morocco
TPP

- United States
- New Zealand
- Singapore
- Australia
- Brunei
- Chile
- Malaysia
- Peru
- Vietnam
Sec. 3d, India Patent Act 2011
“The following are not inventions . . .
the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance”

US TPP Proposal Art. 8.1
“patents shall be available for any new forms, uses, or methods of using a known product; and a new form, use, or method of using a known product may satisfy the criteria for patentability, even if such invention does not result in the enhancement of the known efficacy of that product.”
Brazil

Price as equal to 5% of income by decile

Total revenue in millions

Flynn, Hollis and Palmedo, 2009
Chart showing Recorded Music Sales (trade value, $ billions) from 2003 to 2009 for various countries including the US, UK, Japan, Russia, India, South Africa, Brazil, and Mexico.
## Coldplay: Viva la Vida (CD)

<table>
<thead>
<tr>
<th></th>
<th>Actual Price (US$)</th>
<th>Comparative Purchasing Power</th>
</tr>
</thead>
<tbody>
<tr>
<td>US</td>
<td>$17</td>
<td>$164</td>
</tr>
<tr>
<td>Brazil</td>
<td>$14</td>
<td>$80</td>
</tr>
<tr>
<td>South Africa</td>
<td>$20.5</td>
<td>$164</td>
</tr>
<tr>
<td>India</td>
<td>$8.5</td>
<td>$378</td>
</tr>
</tbody>
</table>

*Media Piracy in Emerging Economies (SSRC 2011)*
Beyond bricks and mortar there are two main retail models – one that gets halfway down the Long Tail and another that goes all the way. The first is the familiar hybrid model of Amazon and Netflix, companies that sell physical goods online. Digital catalogs allow them to offer unlimited selection along with search, reviews, and recommendations, while the cost savings of massive warehouses and no walk-in customers greatly expands the number of products they can sell profitably.

Pushing this even further are pure digital services, such as iTunes, which offer the additional savings of delivering their digital goods online at virtually no marginal cost. Since an extra database entry and a few megabytes of storage on a server cost effectively nothing, these retailers have no economic reason not to carry everything available.

Chris Anderson, Wired
Lowest Price for d4T+3TC+NVP

Data: MSF, *Untangling the Web of Price Reductions*; Table by Sean Fiil Flynn and Mike Palmedo, PIJIP 2008
<table>
<thead>
<tr>
<th>LAWMAKING PROCESS</th>
<th>Maximalist/Enforcement Agenda</th>
<th>Development Agenda</th>
</tr>
</thead>
<tbody>
<tr>
<td>SCOPE</td>
<td>One-size-fits-all protection, permissive L&amp;E</td>
<td>Flexibility in protection, mandatory L&amp;E</td>
</tr>
<tr>
<td>ENFORCEMENT</td>
<td>Public, consumer level, summary processes</td>
<td>Private, commercial scale, judicial process</td>
</tr>
<tr>
<td>PENALTIES</td>
<td>“Deterrent”</td>
<td>“Adequate to compensate”</td>
</tr>
</tbody>
</table>

Table by Sean Fiil Flynn, PIJIP, 2012
<table>
<thead>
<tr>
<th>LAWMAKING PROCESS</th>
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<th>Development Agenda</th>
<th>Human Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Plurilateral, unilateral, closed</td>
<td>Multilateral, open</td>
<td>Free expression</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Just admin action</td>
<td>Just admin action</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Separation of powers</td>
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</tr>
<tr>
<td>SCOPE</td>
<td>One size fits all protection, permissive L&amp;E</td>
<td>Flexibility in protection, mandatory L&amp;E</td>
<td>Soc &amp; econ rights</td>
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<tr>
<td></td>
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<td>Hum rts L&amp;E (Yu)</td>
<td>Soc &amp; econ rights</td>
</tr>
<tr>
<td>ENFORCEMENT</td>
<td>Socialized enforcement, summary process</td>
<td>Private enforcement, judicial process</td>
<td>Due process</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Right to property</td>
<td>Right to property</td>
</tr>
<tr>
<td>PENALTIES</td>
<td>“Deterrent,” criminalization</td>
<td>TRIPS: “adequate to compensate”</td>
<td>Due process</td>
</tr>
</tbody>
</table>

Table by Sean Fiil Flynn, PIJIP, 2012
The Global Congress on Intellectual Property and the Public Interest, August 25-27, 2011, convened over 180 experts from 32 countries and six continents to help re-articulate the public interest dimension in intellectual property law and policy.

The Washington Declaration on Intellectual Property and the Public Interest records the conclusions from the Congress. It has received more than 755 signatures to this day (26th September, 2011). To view the Declaration and the signatures or to add your support: http://infojustice.org/washington-declaration

Preamble

Time is of the essence. The last 25 years have seen an unprecedented expansion of the concentrated legal authority exercised by intellectual property rights holders. This expansion has been driven by governments in the developed world and by international organizations that have adopted the maximization of intellectual property control as a fundamental policy tenet. Increasingly, this vision has been exported to...
UNTOLD STORIES IN SOUTH AFRICA:

Creative Consequences of the Rights Clearance Culture for Documentary Filmmakers

Sean Flynn and Peter Jaszi

A project of:
Black Filmmakers Network & Documentary Filmmakers' Association, South Africa
Program on Information Justice and Intellectual Property & Center for Social Media, American University
Canada Seeks Comments on Its Possible Participation in the TPP Negotiations

The Canadian Department of Foreign Affairs and International Trade is seeking comments on whether it should join the Trans Pacific Partnership negotiations. Its notice asks for input on a range of topics, including “views and experiences with the protection of intellectual property rights.” The deadline for submissions is February 14, 2012. Click here for the official government notice.

White House – Extended Deadline for Public Access and Digital Data Requests for Information

[Repost of a blog on whitehouse.gov by Rick Weiss]

In November, OSTP issued two Requests for Information (RFI), one on open access to scientific publications and the other on the management of digital data. Yesterday, responding to numerous requests, we submitted to the Federal Register an extension of the deadlines for those RFIs to January 12, 2012. [Read More...]

USTR requests comments for the 2012 Special 301 Report

On December 23, USTR published a request comments in the Federal Register for the 2012 Special 301 Report, its annual report which identifies countries that “deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection.” The deadline for submissions from interested parties is February 10, and the deadline for submissions from foreign governments is February 17. [Read More...]