



Perceptions of Intellectual Property: a review

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The views expressed in this paper are solely those of the author and may not necessarily coincide with those of the Haas School of Business UC Berkeley or the Intellectual Property Institute.

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The Author's Background



Roya Ghafele has had a long-lasting interest in the social and political dimensions of language. In papers on a wide variety of issues concerning international affairs, such as nuclear nonproliferation, international trade and development or the normative aspects of the Madrid System for the international registration of trade marks, she has repeatedly made the point that language determines the social reality, context and space in which international policy making takes place.¹

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Roya Ghafele was trained in international affairs and economics at Johns Hopkins University, the Sorbonne and Vienna University. Her Ph.D. "Globalization, Francophone Africa and the WTO—a Historical Discourse Analysis" was awarded the Theodor Körner Research Prize by the President of Austria.

¹ R. Ghafele's selected work on the creation of social realities through language: "Globalisierung, Frankophones Afrika und die WTO. Eine historische Diskursanalyse", PhD Thesis. Wiener Universitätsverlag, Wien 2002; "Trademark Owners' Perspectives on the Madrid System", 2/07 *Oxford Journal on Intellectual Property Law and Practice* 2007, p.1-28; "Examining the Discourse on Nuclear Weapons/Examen du Discours Nucléaire" in 2 *Disarmament Forum/Forum du Désarmement* 2002, pp77-87 & 85-95; "The Metaphors of Globalization and Trade: An Analysis of the Language used in the WTO", 3/3 *Journal of Language and Politics* 2004, pp 441-463; "E-commerce: Chancengleichheit durch Überbrückung des Digital Divide? Eine historische Diskursanalyse" in 12 *Herrlich wieder Mensch zu sein. Institutszeitschrift zur Erforschung der Gewerkschaften und der Arbeiterkammern* 2002, pp 45-71; Research Assistant for Professor Patrick McCarthy, *Language, Politics and Writing. Stolentelling in Western Europe*, Palgrave Macmillan, New York 2002.

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Introduction

IP—The currency of the knowledge-based economy

Intellectual Property (IP) emerges as an essential organizational principle of the knowledge-based economy, since it determines the way in which knowledge relations are governed and structured.

Authors such as J. Mouritsen/S. Thrane or L. Moerman/S. Van der Laan go further and see in IP a property right in an abstract object.² In this sense, IP can be described as knowledge that is made actionable.

This review relies on the standard legal definition of IP as provided by the World Intellectual Property Organization (WIPO)

“Intellectual Property protects products of the human mind, such as inventions, literary and artistic works, symbols, names, images, and designs used in commerce. Intellectual property comprises the areas of patents, trademarks, industrial designs, geographic indications of source and copyright, which includes literary and artistic works. Rights related to copyright include those of performing artists in their performance, producers of phonograms in their recordings, and those broadcasters in their radio and television programs”.³

However, the review emphasizes the relationship between the words “intellectual” and “property”. It views IP rights as property rights over immaterial assets, which allows market participants to engage in entrepreneurial activities and to overcome market failures associated with publicly available knowledge.⁴ IP makes knowledge economically functional and managerially controllable. Eventually, IP facilitates hedging against risk and provides the inventor with the opportunity to turn a new idea or invention into an innovation and engage in some sort of commercial interaction. This falls within the paradigms for entrepreneurship and innovation developed by early key scholars such as F. Knight and J. Schumpeter.⁵

IP can contribute to organizational effectiveness and resolve issues related to the appropriation of a firm’s R&D activities and innovation. Furthermore, it can provide an incentive for the creation of invention, the making of investments so as to develop and commercialize innovation, the motivation of inventors to declare their inventions and to permit their orderly exploration. Managed under a public interest paradigm and in a proactive way, it can furthermore contribute to bridging divides, both within and between societies, allowing developing countries to leverage their own latent creativity. It can be argued that many of these strategic potential approaches remain

² J. Mouritsen/S. Thrane, “Accounting, network complementarities and the development of inter-organizational relations”, 31 *Accounting, Organizations and Society* 2006, pp 241—275.

L. Moerman/S. Van der Laan, “TRIPs and the pharmaceutical industry: Prescription for Profit?” 17 *Critical Perspectives on Accounting* 2006, pp 1089—1106.

³ www.wipo.int

⁴ The European Patent Organization has adopted this approach in its document *Scenarios for the Future: How might IP regimes evolve by 2025? What global legitimacy might such regimes have?* EPO, Munich 2007.

⁵ J. Schumpeter, *Capitalism, Socialism and Democracy*. Harper and Brothers: New York 1942.

F.H. Knight, “Profit and Entrepreneurial Functions”, 2 *Journal of Economic History* 1942, pp 126-132.

unfulfilled if it is perceived that the concepts to which IP remains shackled do not permit thought or action along these positive lines.

The purpose of this review is therefore to help understand the current discourse on intellectual property, to grasp underlying themes, assumptions and connotations associated with the term “IP”, so as to identify paths leading to a more comprehensive understanding of IP and the opportunities it provides to market participants, consumers, policy makers and citizens worldwide. It seeks to refer to the “said” as well as the “unsaid”.

This paper was prepared under the supervision of the Intellectual Property Institute (IPI) in London. The views expressed in this study do not necessarily reflect those of the IPI, which emphasizes that it is neither “pro IP”, nor “contra IP”, but only “pro fact-based research” and against “unsubstantiated statements”. The brief of the IPI for the preparation of this analysis was that this document should be written in easy and understandable language, without academic jargon. It should also be accessible to lay people. For this reason I was asked to keep as short as possible the theoretical aspects of this study which explain its methodology and scientific parameters. This report should also record recurring themes with which IP remains associated, reflecting mainstream critiques of the IP system.

The research on which this paper is based was undertaken during late 2007 and early 2008, with relatively little time to develop the themes recorded below or to monitor the continuing nature of the IP discourses in which the principal actors engage. This paper may nonetheless provide a useful springboard for further research, in which the roles of the protagonists and their respective positions may be explored in more detail.

IP and Globalization

Timeframe

“Uruguay Round, so unfair!”⁶

Contemporary discourse on IP and globalization is aggressive in its style and tends to express the many and varied concerns raised by the anti-globalization movement over the World Trade Organization (WTO) and its administration of the TRIPs agreement, rather than engaging in any detailed analysis of the legal architecture of the IP system.

In this sense, the Uruguay round of WTO discussions marked not only the birth of a new international treaty on IP, the TRIPs agreement, but also the inception of the critical IP discourse. From these discussions new international proponents emerged and a new orientation of IP-speak.⁷ Issues such as IP and globalization and public health emerge as completely new themes, yet they are discussed more in terms of protest than in terms of a solution-driven perspective.

⁶ J. Stiglitz, “Making Globalization Work”, 139 *South Bulletin* 2007, pp 67-75.

⁷ P. Burke, “The meaning of historical terms and concepts: New studies on Begriffsgeschichte”, *German Historical Institute* Washington D.C. Occasional Paper 15, 1996, pp 70-96.

The public outcry at the WTO ministerial conference in Seattle in 1999 made a major impact on the way IP was perceived. Until then, IP passed as a merely technical, legal concept. Subsequently concerns over the social implications of globalization were increasingly interwoven with the concept of intellectual property. Many actors, primarily worried that globalization would challenge their core beliefs and question fundamental human values, felt they had a say on (or rather against) IP. The discourse on IP was thus turned into a much wider discussion and expressed a general dislike for the WTO and the market liberalization approach for which it stands.⁸

In none of the articles I reviewed on how the anti-globalization movement perceived IP could I find any substantial critique of WIPO, its activities and the treaties it administers. The equation seems to be this:

IP = patents = pharmaceutical patents = WTO's approach to free trade and the perceived unhealthy side effects that come with it.

IP is many times used interchangeably and/or supplementary to notions such as downsizing jobs, outsourcing capacities to less wealthy nations, exploitation of the poor and their resources, pressure on developed countries' workforces, the erosion of the public health system and the social safety net, the prohibition of workers' unions in emerging markets and the erosion of unions in developed countries. In this sense the discourse on IP and globalization reflects many of the elements of the traditional discourse of left wing policy-making and represents policy concerns much bigger and comprehensive than the concept of IP in and by itself.

Who drives the discourse on IP and globalization?

In "The right to good ideas: patents and the poor", *The Economist* depicts two driving forces in the contemporary discourse on IP and globalization. The one is interested in advancing the knowledge economy, an approach based on the belief that knowledge is the driving factor behind economic growth. The other resides on a belief that IP is a major means to advance the process of globalization.⁹ While the former is strongly motivated by new economic growth theory, as for example advanced by Stanford professor Paul Romer¹⁰, the latter is based on typical anti-globalization arguments, such as for example the position that the IP system helps multinational companies to build up monopolies to the detriment of the poor, drives small and medium-sized enterprises (SMEs) and local business in developing countries out of business and increases prices for consumer products, be they pharmaceuticals or software.¹¹

As comes perhaps as no surprise, the defendants of the IP system turned out to be the traditional proponents of globalization: business, business associations and business-oriented academics. The materials reviewed for this research reflected a high degree of predictability and coherence in their content.

⁸ D. E. Evans, "Who Owns Ideas? The War over Global Intellectual Property" November/December 2002 *Foreign Affairs*, pp 28-35.

⁹ S. McElhinney, "Exposing the interests: Decoding the Promise of the Global Knowledge Society", 7 *New Media Society* 2005, pp 748-758.

¹⁰ P. Romer, "Endogenous Technological Change", 98/5 *Journal of Political Economy* 1990, pp 71-102.

¹¹ "The Right to Good Ideas. Patents and the Poor". 359 *The Economist*, London 23 June 2001, pp 21-24.

An excellent illustration of traditional left wing critique can be found in Michael Perlman's review of "IPR and the commodity form", published in the *Review of Radical Political Economics*: "IP is a strategy that defends capitalists, who with the words of Marx can no longer pretend that they are serving a social function".¹² Perlman, an economist at UC San Francisco, argues that "IP converts scientific knowledge and therefore ... allows modern capitalism to revert to a winner take all arrangement". He particularly criticizes the fact that innovative ideas and scientific breakthroughs are to a large extent funded by the public, yet subsequently capitalized by corporations and then resold to the public at a higher price. In his view "those who claim patent rights did nothing but extend the work already done in the public sphere". He concludes that the patent system is "unfair" (a widely used notion in the context of IP and globalization) since it reserves the exclusive right to discovery while "offering absolutely nothing to the "others" who have contributed to its creation".

From the moment the anti-globalization movement became interested in IP (usually patents, but with a few references to copyright),¹³ critiques of the IP system arose from a variety of actors who at first sight did not seem to have a primary stake in IP, like the Chicago-based Christian Century and feminist associations situated all over the world.¹⁴ The critique of those actors does not so much raise technical question of intellectual property, but rather substantiates their views on IP by means of overarching ideological, philosophical and sociological critique. This makes the IP system just another illustration of gender discrimination along with the exploitation of the poor by multinational corporations, the disadvantageous situation of workers in the global economy or the violation of Christian beliefs, to name but a few. The Christian Century for example criticizes the IP system together with a range of other global issues, such as global warming, debt relief, trade policies and corporate governance.¹⁵

Gender studies again see in the IP system a reflection of "hypermasculinized" values. Thus IP fails to recognize that "the technological worlds of men and women differ fundamentally".¹⁶ In this sense gender studies link the IP system to questions such as access to education, women inventors and the professional opportunities women have in a male-dominated work environment. Journals such as *Canadian Women Studies* also publish articles asking about the extent to which the developed world is not "feminized" in the TRIPs agreement since it puts developing countries in a passive, receiving position. The potential violent impact of the IP system is

¹² M. Perlman, "IPR and the Commodity Form: New Dimensions in the Legislated Transfer of Surplus Value", 35 *Review of Radical Political Economics* 2003, pp 304-320.

¹³ J. Stiglitz, "How to Fix the IP Imbalance: Too Much IP Protection Bad for the Economy". *Managing Intellectual Property* Oct 28 2004, pp 35-39.

S. Kell, "What role for Humanitarian IP? The Globalization of IPR" 6(1) *Journal of Law Science and Technology*, pp 20-33; N. Yeates, "Globalization and Social Policy: From Global Neoliberal Hegemony to Global Political Pluralism", 2(1) *Global Social Policy* 2002, pp 69-91.

¹⁴ S. Barwa/S. Rai, "Knowledge and/as Power: A Feminist Critique of TRIPs", 7(1) *Technology and Development* 2003, pp 91-100;

The Hindu, "Neo-Liberal Globalisation: a Threat to Women", Jan. 6 2003. M. Stackhouse, "For Fairer Trade", 124(16) *The Christian Century*, Chicago 2007, pp 28-35.

¹⁵ M. Stackhouse *ibid* and R.V. Adkinsson, "Globalization, Strategic Formation and the Use of Indigenous IP in the biotech industry", R.L. Ostergard/M. Tubin/J. Altman, 22/4 *Third World Quarterly* 2001, pp 643-660.

¹⁶ K. Joanna, "State of Our Globe—Globalization and Women's Health: Women and Environments", 50/61 *International Magazine*. Toronto 2003, pp 23-40.

depicted in the example of female farmers who cannot access the seeds they need to nourish their children.¹⁷

Equally human rights activists have raised their concerns over the TRIPs agreement. Take for example the UN High Commission for Human Rights (UNHCR):

“TRIPs does not adequately reflect the fundamental nature and individuality of all human rights, including the right of everyone to enjoy the benefits of scientific progress and its applications, the right to health, the right to food and the right to self determination. There are apparent conflicts between the property rights regime embodied in the TRIPs agreement and international human rights law”.¹⁸

Common Themes

“Enslaved by Free Trade”¹⁹

Stiglitz, a major voice of the anti-globalization movement, suspects that the TRIPs agreement was consciously situated within the WTO and not the WIPO. In contrast to WIPO the WTO has “teeth” since Member States can ask for the respect of its international treaties through the Dispute Settlement Mechanism, which WIPO cannot. But Stiglitz offers another explanation: it was easier to advance a specific IP agenda through the trade channel than through the innovation/technology channel. Says Stiglitz, “IP had nothing to do with trade, yet the idea was to push the agenda on the trade ministers who do not understand IP”.²⁰

Ruth Rikowski echoes this view in a paper contributed to *Business Information Review* in 2003: “TRIPs is not part of trade, but instead is primarily designed to help big business, as it engenders and encourages a protectionist environment through IP for the benefit of large corporations”.²¹

Following Stiglitz’s line of argument a wide range of authors have criticized the way the Uruguay Round was negotiated, claiming that trade ministers from developing countries were underrepresented, ill-informed and in many instances lacking the technical and linguistic competencies needed for them adequately to represent their position in the lengthiest trade negotiation in world history:²²

¹⁷ S. Vandana, “Violence of Globalization”, 6 *Canadian Woman Studies* 2002, pp 180-200; M. McMahon, “Resisting globalization. Women Organic Farmers and local Food Systems”, 6 *Canadian Woman Studies* 2002, pp 203-230.

¹⁸ UNHCR Resolution Nr. 2000/7.

¹⁹ G. Monbiot, “Enslaved by Free Trade”, 178(2397) *New Scientist* 2003., pp 25-40.

²⁰ J. Stiglitz, *ibid*.

J. Stiglitz, “My Say: Making Globalization Work”, *The Edge of Malaysia* Sept 18 2006.

J. Stiglitz, “Patents with Borders”, *New York Times* May 9 2007.

J. Stiglitz, “To Have and Have Not”, *New York Times* December 24 2006.

²¹ R. Rikowski, “Tripping over Trips: An Assessment of the WTO’s Agreement on TRIPs, Focusing on Trade, Moral and Information Issues”, 20 *Business Information Review* 2003, pp 149-165.

²² M. C. Ingram, “Information Feudalism: Who owns the Knowledge Economy?” 32/5 *Contemporary Sociology* 2003 pp 638-650;

S. Wright, “Knowing scale: IPR, knowledge spaces and the production of the global”, 6(6). *Social and Cultural Geography*. 2005, pp 903-921 ; J. V. Beaverstock, “Globalization and Its Outcomes”, 82(4) *Economic Geography* 2006, pp 455-470; K. Coulter, “Earth First! Globalization: Corporations devour Biodiversity”, 19 *Tucson* 1999, pp 30-48; S. Vandana, “The Daily Violence of Globalization. Turning the Tide”, *Culver City* 2001 Nr. 14/2, pp 3-18.

“TRIPs was negotiated by a handful of people, perhaps 45 ... Developing countries essentially signed away their rights in exchange for a couple of concessions in the agriculture and textiles industry, with very few actually understanding the implications on their markets, people and culture”.²³

Since IP gained recognition primarily through the international trade/trade liberalization perspective, rather than through an internal market, innovation, cultural policy or even business perspective, the perceived advantages and disadvantages of IP were primarily assessed through the trade lens. It comes therefore as no surprise that IP was being talked about in the context of “technology transfer to developing countries” or the “attraction of foreign direct investment.” Trade economists such as Keith Maskus extensively discuss whether “strong IP regimes” in developing countries can enhance these positively connotated mechanisms, which would allow the “cross sale” of the “bitter pill/unpleasant medicine” of “strong intellectual property regimes” in exchange for the much-desired foreign direct investment and technology transfer. Under this paradigm academics have primarily investigated multi-country trade and direct investment surveys or flows, finding either that weaker intellectual property protection policy systems discourage or that stronger intellectual property protection policy systems encourage trade and direct investment.²⁴ These findings suggest that developing countries will receive more trade and direct investment after intellectual property reform, and these are important research findings—but they say nothing about the domestic innovation effects of reform. Rather, these studies tend to put developing countries in a receiving position and ignore the pool of talent existing in developing countries.

“Globalization for us and for them”²⁵

The overarching discourse on IP and developing countries is contextualized into the categories of the “have” and “have not”, a common theme in the way globalization is discussed.²⁶ Discourse analysis is familiar with the notion of “the other” as that which deviates from the accepted norm, the dominant principle.²⁷

Globalization discourse constructs developing countries as the permanent “other”, deviating from the norms and standards set by developed countries. Nicolea Yeates, for example, views the current IP system as “global neoliberal hegemony” and asks

²³ J. Stiglitz, “Making Globalization work”, 139/67 *South Bulletin* Feb 15 2007.

²⁴ B.S. Javorcik, “The Composition of Foreign Direct Investment and Protection of Intellectual Property Rights: Evidence from Transition Economies”, 48 *European Economic Journal* 2004, p.39-62.
J.Y. Lee/E. Mansfield, “Intellectual Property and US Foreign Direct Investment”, 78 *Review of Economics and Statistics* 1996, pp 181-186.

K.E. Maskus, “The Role of Intellectual Property Rights in Encouraging Foreign Direct Investment and Technology Transfer”, 9 *Duke Journal of Comparative and International Law* 1998, pp 109-161.

K.E. Maskus/M. Penubarti, “How Trade-Related Are Intellectual Property Rights?”, 39 *The World Economy* 1995, pp 227-248;

C.A. Primo Braga/C. Fink, “The Relationship between Intellectual Property Rights and Foreign Direct Investment”, 9. *Duke Journal of Comparative and International Law* 1998, pp 163-188.

²⁵ M. Boldrin/D. K. Levine, “Intellectual Property in a Global Economy. Globalization: For us and for them”, PowerPoint Presentation, The Role of IP in the Global Economy http://www.dallasfed.org/news/research/2004/04global_boldrin_levine.pdf.

²⁶ “TRIPs: A Blessing or Curse for Developing Countries?” Discussions at the European Patent Forum. <http://www.epo.org/topics/patent-system/scenarios-for-the-future/forum.html>.

²⁷ R. Wodak, “Das Ausland and Anti-Semitic Discourse: The Discursive Construction of the Other” In *The Language and Politics of Exclusion*. Thousand Oaks, CA 1997.

how we can move to global political pluralism.²⁸ Equally, Matthews thinks there is a need to “develop cultural paradigms that are different from postcolonial and imperialistic paradigms”²⁹ and the *International Herald Tribune* sees IP as a major means to destroy the dream of “one world” since it benefits wealthy nations and therefore continues to increase the gap between rich and poor countries in the world as a whole.³⁰

The theme “us versus them” is repeated in various forms, usually with a negative connotation or through a search to underline current asymmetries. Evelyn Su, for example, speaks of “winners and losers” when she discusses the effects of the TRIPs agreement on developing countries. She reflects the widespread view that “TRIPs allowed large multinational corporations with far flung networks and global factories to dominate a new economic order”.³¹ Surprisingly, even research papers issued by investment banks such as Credit Suisse First Boston reflect the discussion of developing countries’ role in the global IP regime under the paradigm of “winners and losers”.³²

Carlos Correa, a Professor from the University of Buenos Aires and member of the WHO’s Committee on IP and Access to Health³³, takes thoughts of authors like Evelyn Su further, devoting an entire chapter in “the TRIPs Agreement: A Guide for the South”, (prepared for the South Center) to the question: “how much freedom remains for developing countries in determining national policies on IPR?” His main line of argument is that the TRIPs agreement was the result of asymmetric negotiations and imposed a new global regime that does not primarily work for the benefit of developing countries.³⁴

Remarkably, this discourse is primarily driven by actors from the developed world. This gives rise to the question of the extent to which the image of the marginalized developed country, cut off from resources and modelled as passive receiver of IP developed elsewhere, serves as a kind of “lost paradise” for the developed world itself. Says Balzac: “while Paris the capital is everything, the province is nothing but itself”, perhaps not only a reflection of the centralized French state, but also of asymmetric power relations at the international level.³⁵

²⁸ N. Yeates “Globalization and Social Policy: From Global Neoliberal Hegemony to Global Political Pluralism”, 2/11. *Global Social Policy Bulletin* 2002, pp 69-91.

²⁹ D. Matthews, “NGOs, Intellectual Property Rights and Multilateral Institutions. Report of the IP-NGOs research project”. Queen Mary Intellectual Property Research Institute. London 2006.

³⁰ “To IBM sharing looks better than hoarding”, *International Herald Tribune* 12 April 2005, p 9.

³¹ E. Su, “The Winners and Losers: The Agreement on TRIPs and its effects on developing countries”, 169. *Houston Journal of International Law* 2000, pp 195-210.

³² G. Keating (Credit Suisse Research Chief), “Global Winners and Losers A booming Population and widespread immigration is fuelling worldwide growth”, 1 *The Banker* 2006, pp 35-50.

³³ World Health Organization: Public Health, Innovation and intellectual property rights. *Report of the Commission on Intellectual Property Rights, Innovation and Public Health*. Geneva: World Health Organization 2006, also: World Health Assembly Resolution 56.27. See eg C. Correa, “Integrating Public Health Concerns into Patent Legislation in developing countries”, <http://www.southcentre.org/publications/publichealth/toc.htm>.

³⁴ C. Correa, *ibid*.

³⁵ H. de Balzac, *Scenes de la Vie de Province: Le lys dans la Vallee* (1871-1880) Paris 1946: La Nouvelle France.

“IP = Violence”

Articles on the impact of the TRIPs regime (though not the IP regime in general) on developing countries can get quite passionate. Its proponents borrow from the domain of crime, injustice and human rights. “Patents kill” was according to *The Economist* a major theme of South African protestors in their “fight” (again another word related to crime and battles) for access to medicines.³⁶

The journal *Canadian Women Studies* takes a similar position and depicts the “violence of globalization” by describing the genocide caused by the IP regime: “The IP regime serves only the wealthy pharmaceutical companies... Patents are literally robbing AIDS victims of their lives”. For reasons like these IP becomes an instrument to exercise violence on a daily basis against developing countries.³⁷ It allows big corporations to “transform the fabric of life into private property... making the third world pay for cumulatively collected knowledge”.³⁸

The images created when speaking of the role of IP in a globalizing world suggest that IP is perceived as dangerous, an instrument of power, probably just another weapon in the fight for power, dominance and global leadership. The brutality of the IP regime is illustrated not only in the generally well-discussed issue of access to health, but increasingly in the context of climate change and environmental protection. Says Karen Coulter: “Earth First!... Other weapons in the globalization armory are agreements on IP. Incorporated in TRIPs, foreign corporations can easily appropriate biodiversity for their private economic development”.³⁹ The recent summit on climate protection held in Indonesia in the autumn of 2007 echoed this concern, discussing the role of IP in the context of climate change and developing countries under the generally established view of IP, that it prevents access and questions the chances of successful transfer of technology. Perhaps that is why the theme of the European Patent Office’s “European Inventor of the Year 2008” is “the role of IP in climate change”.⁴⁰

“European cows are treated better than African peasants”⁴¹

The “weapon” of IP is essentially being used to maintain an “unfair” world order, dominated by the US and other wealthy countries. This makes Christopher May in his article “Capacity building and (re)production of IP” argue that even development aid serves merely to replicate existing power structures and dominate poor countries, thus seriously questioning the politics behind this type of activity.⁴² The ethical concern for fairness is also depicted by the *Toronto Star* claiming that “fairness calls

³⁶ S. Shulman, “In Africa, Patents Kill. In AIDS-stricken Africa, the enforcement of Western drug patents is a needless death sentence for millions”: <http://www.technologyreview.com/Biotech/12348/>.

³⁷ S. Vandana, “Violence of Globalization”. 6 *Canadian Woman Studies* 2002, pp 180-200.

³⁸ R. L. Ostergard/M. Tubin/J. Altman, “Stealing from the Past: Globalization, strategic formation and the use of indigenous IP in the biotech industry”, 22/4. *Third World Quarterly* 2001, pp 643-660.

³⁹ K. Coulter “Earth First! Globalization: Corporations devour Biodiversity”, Tucson Daily Planet Publishing July 31 1999, p 30.

⁴⁰ www.epo.org.

⁴¹ R. Picciotto, “Protests by development activists against injustice of the trading system are fully justified”, Letter to the editor, *Financial Times*, 30 June 2003.

⁴² C. May, “Capacity Building and the (Re) production of Intellectual Property Rights”, 25/5 *Third World Quarterly* 2004, pp 821-837.

for fairer rules”, which the IP regime does not.⁴³ Again, the discourse is created under the overarching themes—IP is unfair—TRIPs serves to exploit the poor—the international trading system is unfair.

Articles asking whether IP is an opportunity or threat are the most optimistic I could find on the issue.⁴⁴ Other questions such as the protection of traditional knowledge, genetic resources and folklore are also used to illustrate the argument. IP creates barriers that developing countries cannot overcome, particularly since the IP regime reflects the values, cultural system and social organization of developed countries. Critiques of the IP system assert that the notion of the individual inventor is deeply rooted in “western traditions” and irreconcilable with developing countries’ collective approaches to innovation, nature, property and communality.⁴⁵ Says John Frow in *Social Semiotics*: “The public space, which is left after all rights have been defined and distributed... is a protocol of an IP system that is built on the principles of Western law and deeply committed to the full commodification of culture”.⁴⁶

“Can Intellectual Property be theft?”⁴⁷

Critiques assert that an additional shortcoming of the IP regime is that it treats the intellectual capital of companies as property, while the knowledge and genetic material of indigenous communities is treated as a common.

The IP system has turned developing countries into alleged “thieves” since the borrowing of ideas elsewhere is now prohibited. To counteract the view of robbery, the “infant industry argument”, which calls for greater protection so to allow domestic producers to stand up against international competition, is repeatedly quoted. Graham Dutfield depicts the distinction between privately owned knowledge and knowledge in the public domain as one which does not work to the benefit of the developing world.⁴⁸ Ostergard, in “Stealing from the Past: globalization, strategic formation and the use of indigenous IP in the biotech industry” gives another illustrative example of the theme “IP = robbery and violence”.⁴⁹

According to authors such as Sarah Wright, “IP reflects knowledge spaces and knowledge as embedded in western traditions and has little to do with indigenous peoples/developing countries’ (the terms are being used interchangeably) perceptions of nature and property”. Thus indigenous people do not perceive nature as a passive container waiting for innovators to model it into forms that are subsequently protected through IP, since nature takes an active role as an innovator in and by itself. According to developed countries’ authors, indigenous communities have taken a different approach to the profit motive and do not want to see their

⁴³ “Fairness calls for fairer rules. IP represents significant barriers to development”, *The Toronto Star*, 17 January 2005.

⁴⁴ “The Globalization Debate: An opportunity or threat to developing economies”, *Ghanaian Chronicle*, 19 Aug 2002.

⁴⁵ P. Marshall, “Guarding the Wealth of Nations. Intellectual property, copyright, and international trade”, 23 *Wilson Quarterly* 1997, pp 23-59.

⁴⁶ J. Frow, “Public Domain and the New World Order of Knowledge”, 10/2. *Social Semiotics* 2000, pp 173-185.

⁴⁷ A. Carmen/A. Saldamando/A. Gonzales/C. Kalafatic, “Plant plunder, genes and sneakers: Can intellectual property be theft?”, 35 *Vanderbilt Journal of Transnational Law* 2003, pp 25-40.

⁴⁸ G. Dutfield, “The Public and the Private Domains. IPR in Traditional Knowledge”, 21/3 *Science Communication* 2000, pp 274-295.

⁴⁹ Ibid.

knowledge being commercialised and/or, in the context of traditional healing methods, being separated from their religious beliefs.⁵⁰

Probably the public outcry against the perceived injustice of the IP regime made the German Chancellor Angela Merkel on the G8 summit of 2007 propose to “Give globalization a human face” and “seek for an appropriate role of IP in the globalized world”.⁵¹

“Poor nations left swimming in a spaghetti bowl of rules”⁵²

Of particular interest in this quote is the use of the passive tense, which puts developing countries again in the role of passive receivers of IP developed elsewhere. Their active participation in the IP system is implicitly denied, which leaves passivity as the only development option to get access to IP developed elsewhere, a rather paternalistic understanding of development.

The journal *Business Ethics, a European Review*, illustrates the point: “IP is an example of how the poor are being exploited by big corporations”.⁵³ Articles carrying the title “playing catch up” or discussing the impact of the IP system on developing countries from the perspective of colonialism, may be well intentioned, yet they do not give developing countries the linguistic space to take active ownership of the IP system. This raises the question how developing countries perceive their role in the international IP system.⁵⁴

A rough analysis of Chinese, Indonesian, Korean and Malaysian newspaper articles and academic work suggests at least some discussion on the role of IP for national economies. This clearly needs more detailed analysis, but for the purpose of this review will be treated in brief.

The *China Daily* for example says that “China is waking up to IP” and correlates IP to Chinese economic growth rates:

“Against the backdrop of economic globalization... the strength of a company depends on its capability to innovate and the number of IPR it owns. Competition is at a higher level if it is based on IPR”.

China Daily also discusses how China can develop self-owned IP. Equally, the *South China Morning Post* makes the point that “home grown” IP opens the door to prosperity. The Chinese press seems to take an ambiguous approach to the issue of counterfeiting and piracy. On the one hand, piracy is considered a national “evil” that even does not prevent national celebrities from being copied; on the other, copying

⁵⁰ S. Wright, “Knowing scale: IPR, knowledge spaces and the production of the global”, 6/6 *Social and Cultural Geography* 2005, pp 903-921.

⁵¹ “German chancellor wants to give globalization human face”, BBC Monitoring Europe. May 24 2007.

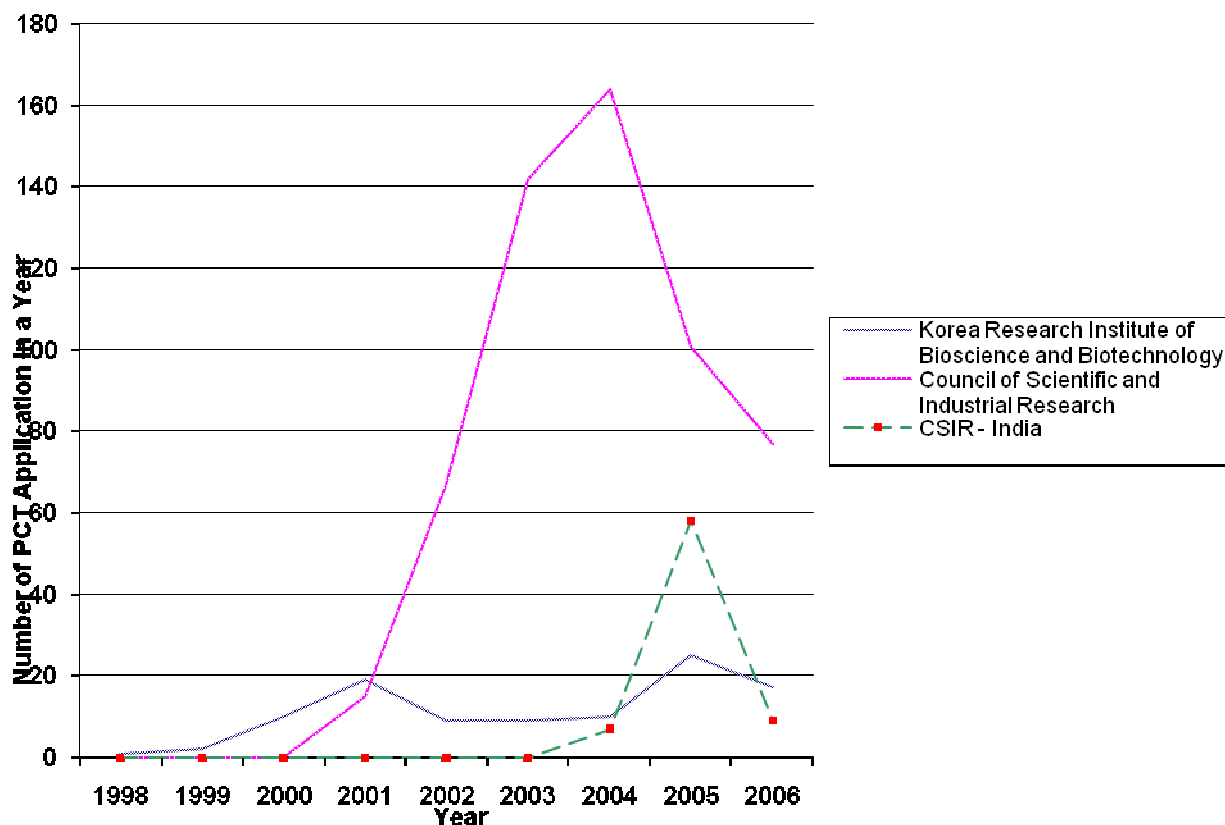
⁵² A. Beattie/F. Williams, “Poor Nations left swimming spaghetti bowl of rule”, *Financial Times*, 26 July 2006.

⁵³ X. Lu, “ Ethical Issues in the Globalization of the Knowledge Economy”, 10/2 *Business Ethics, A European review* 2001, pp 113-119.

⁵⁴ B. Hogge, “Playing Catch Up. Arts and Culture”, *New Statesman*, November 2007; A.B. Engelberg, “Property rights and danger of a new form of colonialism”, Asia edition of the *Financial Times*, 21 November 2005; *International Herald Tribune*, “To IBM sharing looks better than hoarding; releasing patents is seen as profitable”, 12. April 2005.

is seen as an expression of Chinese culture, which holds that counterfeiting is the highest form of appreciation of another person's work.⁵⁵

A proactive approach towards IP management in the era of globalization can also be found in the Thai newspaper *The Nation*, which considers that "managing globalization is not the sole jurisdiction of the U.S".⁵⁶ Self-owned IP is considered an essential requirement for economic prosperity. In this context it is worth mentioning that the Thai SME bank was ahead of European banks in accepting IP as collateral and implemented a national IP strategy. Equally, Indonesia, has taken substantive steps in aligning IP to its overall strategy in leveraging Jamu, traditional Indonesian medicine. Data extracted from the PCT (Patent Cooperation Treaty) Statistics in 2006 also suggests that developing countries are increasingly leveraging the opportunities provided by international patent protection. The chart below shows the growing trend of patenting activities of public research institutions active in biotechnology, situated in selected developing countries.⁵⁷



⁵⁵ *South China Morning Post*, "Patents a deadly weapon in export war: Mainland companies must build IP to guard against lawsuits", 22. March 2005; *South China Morning Post*, "International help needed to combat piracy", 1 April 2006; C. Coonan, "Steel not Tofu. President Hu Jintao-Chinas commitment to the protection of IP", *Variety*, 9 October 2006; *New Straits Times* (Malaysia), "Creating new innovation frontier", 1 October 2006; *Jakarta Post*, "Reinventing Globalization", 30 December 2002.

H. Priyono, "Globalization: In the long run, we are all dead", *Jakarta Post*. Reproduced from *China Daily*. 19 August 2001.

⁵⁶ *The Nation* (Thailand), "Managing Globalisation is not the sole jurisdiction of the US", 18 March 2004.

⁵⁷ A. Taubman/R. Ghafele, "Managing IP in the Public Interest: WIPO's Perspective" in A. Krattiger, *Handbook of IP Management in Health and Agricultural Innovation*, MIHR/PIpra 2007, Oxford.

Not every commentator would vest great significance in these initiatives. A huge part of the developing world still remains fairly silent on IP, a silence that one critical analyst, Pierre Bourdieu, would depict as the silence of the powerless: those who believe they have nothing to say do not dare to formulate a position, believing that it is up to the experts to determine what is right and healthy for them, a discourse that shows parallels to the patient/doctor interaction in medicine.⁵⁸

IP and Health

Timeline

The TRIPs agreement marks the beginning of a debate that has to a large extent resulted in the negative reputation of the intellectual property system. Patents are considered to “cause death, suffering and the prevention of access to much needed pharmaceuticals”, particularly in developing countries. The debate is polemic, passionate and everything other than calm and balanced. In this sense it is very similar to the debate on “IP and Globalization”. IP primarily gains widespread recognition through the lens of access to medicines and the impact of pharmaceutical patents on prices of medicines. It is seen as the tool that allows multinational companies to enrich themselves, no matter what, and the concept of IP becomes increasingly overloaded. NGOs, particularly, Medecins Sans Frontieres and OXFAM, drive the debate. Among academic journals, *The Lancet* strikes one as an ardent opponent of the IP system, repeatedly arguing that it harms public health:

“Patents prevent generic manufacturers from producing much needed medication at lower cost. This has fatal consequences. Patients, particularly in developing countries cannot afford the drugs they need to stay alive. Patents therefore become a matter of life and death, an issue of fundamental survival. The solution NGOs offer to “fight the devastating effects of the patent system” is to introduce compulsory licensing. Making market participants give up their rights is considered the way to fight global health inequities”.⁵⁹

“How much longer can we accept that commercial rights dominate over the right to live?” asked one public health activist in an UNCTAD conference held in Geneva in 2006.⁶⁰ Her question expresses well the concerns raised by health activists and NGOs. The underlying theme seems to be how to assure an equitable distribution of wealth and avoid the enrichment of a few at the expense of the masses. The pharmaceutical industry reacts to these attacks in a uniform manner, drawing on the standard pro-IP argument: without patent protection there is no innovation; pharma research is expensive, clinical trials cost and so does the process for approval by the Food and Drug Administration. There is also the risk of losing money associated with pharma research. Patents are the only hedge against those risks. Their point: without profits, the industry can’t give patients the medicines they need.

⁵⁸ Bourdieu, Pierre, *Les structures sociales de l'économie. du Seuil*, Paris 2000, Choses dites. Minuit: Paris 1987; Die Feinen Unterschiede. Kritik der gesellschaftlichen Urteilskraft. [Paris 1979] 3. korr. Aufl. Frankfurt am Main 1984. Ce que parler veut dire, l'économie des échanges linguistiques. Fayard: Paris 1982.

⁵⁹ A. M. Kimball, “The Health of Nations: Happy Birthday WTO”, 367 *The Lancet* 2006, pp 188-200; N. Ford, “The role of civil society in protecting public health over commercial interests: Lessons from Thailand”, 363 *The Lancet* 2004, pp 560-563.

⁶⁰ Ad hoc Expert Meeting, International arrangements on intellectual property and measures to improve developing country productive capabilities in the supply of essential medicines, (19/10/06-20/10/06).

Subsequently international organizations became involved in the issue. In 2001 the WTO and the WHO undertook a joint workshop on pricing and access to medicine. In the same year the WTO Doha Declaration recognized the concerns raised, probably a reaction to the fight of South African HIV/AIDS activists against pharmaceutical companies and the subsequent grant of a compulsory licence. In 2003 the adoption of paragraph 6 of the WTO Doha Declaration could clearly be read as recognition of public health concerns. It offered a pathway for compulsory licensing under TRIPs. The World Health Assembly, the governing body of the WHO, issued resolution WHA 51, giving it the mandate to assess the public health impact of the IP system. This led to the creation of a standing committee and various reports on the issue by the WHO.⁶¹

Yet amendments to the TRIPs agreement did not resolve the debate and NGOs and public health activists complained that the so-called “TRIPs Plus” standards⁶², as reflected in various bilateral free trade agreements, further diminished policy options to protect public health since those agreements set higher standards for IP protection than did TRIPs.⁶³

Other issues related to IP and public health, such as the role of trade marks in the marketing of tobacco products and obesity-inducing food, were completely ignored in these arguments.

The discourse on IP and public health is strongly driven by NGOs

The study on IP and NGOS conducted by the Centre for Applied Studies in International Negotiations—CASIN—and the Study on IP, NGOs and Multilateral Institutions by the University of London both provide an excellent overview of NGOs and their attitudes towards IP.⁶⁴ The field of IP and health covers NGOs’ main concerns.⁶⁵ It is an issue of global concern, in contrast with issues such as genetic resources, traditional knowledge and folklore. OXFAM launched its “Cut the Cost” campaign in 2001, following the Seattle Ministerial meeting of the World Trade Organization. Academics in line with OXFAM’s approach are Carlos Corra, Frederick Abbott and Jerome Reichman.⁶⁶

⁶¹ For further discussion see GAO Report, *Intellectual Property: US Trade Policy Guidance on WTO Declaration on Access to Medicines May Need Clarification*. Washington DC: GAO Report-07-1198A Report to Congressional Requestors 2007.

⁶² R. Pastor, “The Impact of Free Trade Agreements on IP Standards in a Post TRIPs World” 2006, http://www.bilaterals.org/article.php?id_article=4311.

⁶³ GRAIN (in cooperation with SANFEC). TRIPs-plus through the back door, *How bilateral treaties impose much stronger rules for IPRs on life than the WTO*, Online Briefing 2001. <http://www.grain.org/briefings/index.cfm?id=6&print=yes>.

⁶⁴ A. Lafortune, *Non Governmental Organizations and Intellectual Property Rights*. Issue Profile: Casin, Geneva 2006; D. Matthews: “NGOs, Intellectual Property Rights and Multilateral Institutions”, Report of the IP-NGOs research project. Queen Mary Intellectual Property Research Institute. London 2006; M.F. Schultz & D.B. Walker, “Intellectual Property. How Intellectual Property became controversial: NGOs and the New International IP Agenda”, 6/2. *Engage*, pp 84-95; G. Mutume, “Health and intellectual property. Poor nations and drugs firms tussle over WTO patent provisions”, 15/1-2 *Africa Recovery*, pp 14-20.

⁶⁵ A. Lafortune, *ibid*.

⁶⁶ F.M. Abbott, “Protecting First World Assets in the Third World: Intellectual Property Negotiations in the GATT”, 30 *Vanderbilt Journal of Transnational Law* 1989, pp 120-150; C. Correa, “Traditional Knowledge and Intellectual Property”, Quaker United Nations Office (QUNO), Geneva, with financial assistance from the Rockefeller Foundation, <http://www.quno.org/geneva/pdf/economic/Discussion/Traditional-Knowledge-IP->

NGOs are not a homogenous group and a distinction must be made between northern and southern NGOs. The NGOs with the highest profile on IP are from the North.

Common Themes

“Rights of patients over patents”⁶⁷

The theme “patents versus patients” is widespread and expressed in various forms such as “patients before patents” or “patents versus patients”. Newspapers like the *Los Angeles Times* and the *Herald Tribune*, and writers situated in the developing world, consider the profit aspirations of pharmaceutical companies as incompatible with patients’ rights. In an article issued in 2006 the *Financial Times* for example argued that “Washington uses trade deals to protect drugs, which puts hundreds of thousands of Thai citizens under threat”. A year later, the *International Herald Tribune* celebrates the “victory of patients over patents”, when an Indian court ruling cleared the path for generic drug firms.⁶⁸ Equally, the *Los Angeles Times* opined that patents on Aids drugs should be ignored, making the point that Third World nations have the right to produce generic versions.⁶⁹

In articles such as “the Health of Nations: Happy Birthday WTO” and “The role of civil society in protecting public health over commercial interests: Lessons from Thailand”, *The Lancet* takes a clear position: IP prevents health and the only solution is compulsory licensing.⁷⁰

English.pdf; C. Correa, “Health and IPR”, 79/5 *Bulletin of the World Health Organization*, 2001, http://www.scielosp.org/scielo.php?script=sci_arttext&pid=S0042-96862001000500002.

K. Maskus Keith/J. Reichman, “The Globalization of Private Knowledge Goods and the Privatization of Global Public Goods”, 7/3 *Journal of International Economic Law* 2004, pp 279-320; J.Reichman, “The TRIPs Component of the GATT’s Uruguay Round: Competitive Prospects for Intellectual Property Owners in an Integrated World Market”, 171 *Fordham Intellectual Property Media & Entertainment Law Journal* 1993, pp 254-266.

⁶⁷ *International Herald Tribune*, “India ruling clears path for generic drug firms; Aid agencies declare victory for rights of patients over patents”, August 7 2007.

⁶⁸ “Patients before Profits: TRIPs and Trade Rules on Intellectual Property”, http://www.oxfamamerica.org/whatwedo/issues_we_work_on/trade/news_publications/trips/art4190.html; “Trading Away Health: Intellectual Property and Access to Medicines in the Free Trade Area of the Americas (FTAA) Agreement”, http://www.doctorswithoutborders.org/publications/reports/2003/FTAA_Advocacy.pdf; <http://www.who.int/intellectualproperty/topics/innovation/innovation/en>; J. Love, “The Politics of Intellectual Property Rights an Access to Medicines”, *The Huffington Post*, May 29 2007, http://www.huffingtonpost.com/james-love/the-politics-of-intellect_b_49782.html; “Innovation, Essential Health Research and IPRs”, *The WHO Working Group*, 2006, <http://www.southcentre.org/info/sccielipquarterly/ipdev2006q3.pdf>; “Patent Rights vs. drugs for poor at issue in India”, *International Herald Tribune*, January 30 2007; “Clash in India: Patents vs. patients, Novartis files suit to stop production of generic drugs”, *International Herald Tribune*, January 30 2007; “How drug patenting fails the world’s poor. WHO report backs reformulating system”, *International Herald Tribune*, May 22 2006; L. Santoro, “Forget the patents on Aids drugs; 3rd World Nations have the right, and the duty, to produce generic versions”, *Los Angeles Times*, October 9 2007.

⁶⁹ For an academic discussion see eg H. Grabowski, “Patents, Innovation and Access to New Pharmaceuticals”, 5/4 *Journal of International Economic Law* 2002, pp 846-860; J. McNeely/M. Rojas/C.Martinet, “The Convention on Biological Diversity: Promise and Frustration”, 4 *Journal of Environment Development* 1995, p.33-50; M. Lanoszka, “The Global Politics of Intellectual Property Rights”, 24/2. *International Political Science Review*, pp 180-200.

⁷⁰ A. M. Kimball: *The Health of Nations: Happy Birthday WTO*. 367 *The Lancet* 2006, pp 188-200; N. Ford, “The role of civil society in protecting public health over commercial interests: Lessons from Thailand”, 363 *The Lancet* 2004, pp 560-563.

“Global War for Public Health”

Like the debate on IP and globalization, the debate over public health uses vocabulary derived from the domain of war, crime, battlefields and conflict. The “war” against “corporate greed” is linked to other major issues of public concern, such as the war against terrorism. Authors like Badawi take the role of advocate on behalf of the poor, depicting IP as a global problem, just like “commercial exploitation, the monopoly of health commodities, new food hazards and the marketing of tobacco”.⁷¹ The IP system is considered an “unnatural act”, showing that market ideals have gained supremacy in all spheres of life, leaving no scope for the greater social interest.

It is striking that the issue of IP and public health is discussed in the realms of “fear” and “threat”, “condemning millions of the poor to premature, preventable death and a near to complete lack of “corporate social responsibility”.⁷² For example, *Global Information Network* rejoiced that the “Local drug Industry gets shot in the arm” when a Pakistani court rejected the patent claims of a multinational pharmaceutical company. Equally, the *International Herald Tribune* observes that “AIDS drugs provoke a battle in India, which, if won by Pharma, could cost lives”.⁷³ The way NGOs and also newspapers like the *International Herald Tribune* report on the lawsuit of Novartis in India to stop the production of generic drugs is reminiscent of a fight between the good (the poor, the public health activists) and the bad (the pharmaceutical industry). When India finally ruled against Novartis in litigation regarding the production of generic medicines, it was considered a clear “victory” (again a vocabulary deriving from the domain of war) of the poor against big corporations.

“Dying for Drugs”

In “The Profits that Kill” Osei Boateng sees in the debate a campaign by the British newspaper *The Guardian* and the NGO OXFAM. In this campaign the pharmaceutical industry was portrayed as an industry devoid of morality using “the patent system to squeeze low cost copies of branded medicines off the market”. According to Boateng *The Guardian* systematically made news with headlines such as “Millions of lives at risk—drug companies must temper their power”.⁷⁴ The ethical dimension of pharmaceutical business is also questioned by activists such as Jamie Love and Julian Borger; Merrill Goozner also asks whether it is acceptable to “view medicine as luxury”.⁷⁵

⁷¹ A. A. Badawi, “The Social Dimension of Globalization and Health”, 3/1 *Perspectives on Global Development and Technology* 2004, pp 38-45.

⁷² “IPS (Latin America): Novartis gets in new campaign against cheap medicines; Health: Novartis in New campaign against Cheap Medicines”, March 2007.

⁷³ M. Rizvi, “Health Pakistan: Local Drug Industry Gets Shot in the Arm”, *Global Information Network*, February 12 2002; “Patent Rights versus drugs for poor at issue in India”, *International Herald Tribune*, January 30 2007; “How drug patenting fails the world’s poor. WHO report backs reformulating system”, *International Herald Tribune*, May 22 2006; “AIDS drug provokes patent battle In India; Approval could cost lives, critics say”, *International Herald Tribune*, May 11 2006.

⁷⁴ O. Boateng, “The profits that kill”, *New African* April 2001, pp 22-27.

⁷⁵ M. Goozner, “Medicine as luxury: The West Treats vital pharmaceuticals as just another commodity. If poor countries can’t afford file, why should they get cheap drugs?”, *The American Prospect* 2002. Princeton, pp 3-7.

“Public health over commercial interests: lessons from Thailand”⁷⁶

While it is not the purpose of this review to document in depth the chronological evolution of the Thai initiative for a compulsory licence of an HIV/AIDS drug, it is worth underlining that the Thai initiative was highly politicized within the paradigms sketched out above and remains for that reason controversial. In contrast the grant of a compulsory licence for a cancer drug by Italy did not receive any attention.

Scholars have addressed the question of how to balance public health concerns with the IP system primarily through the lens of compulsory licensing and other policy choices questioning substantive patent law, such as criteria for patentability and the expansion of further exceptions and limitations under the patent system.⁷⁷ The WHO’s Commission on Intellectual Property Rights, Innovation and Public Health appears to be largely in line with scholarly thinking under this paradigm.⁷⁸

Within this context the question is also raised as to which extent IP promotes innovation in health R&D. Building upon the work of Heller and Eisenberg⁷⁹ the UK Commission on IPR for example argues that IP plays hardly any role in stimulating R&D, particularly in R&D on diseases prevalent in developing countries.

The pharmaceutical industry’s reaction

With a certain degree of humour Neil Turner states in the *Pharmaceutical Executive* that the pharmaceutical industry is “as popular as an arms dealer”. Headlines such as “The profits that kill” or “at the mercy of drug giants” have strongly challenged the reputation of the industry. Thus he suggests a comprehensive communication strategy for pharmaceutical companies: they should spread positive messages, avoid litigation whenever possible, avoid communication gaps and silence, partner with the public sector and present a more eloquent, compassionate and inclusive public face.⁸⁰

Repeatedly the point has also been made that less than 5% of medicines of the WHO’s essential drugs list are subject to patent protection, yet, drugs are still not available in many countries. WIPO has recently commissioned a study analyzing the patent landscape for HIV/AIDS drugs. This study is based on the argument that many countries considering the IP system to be an impediment to health may not necessarily be aware of the fact that the medicine in question has not been under

⁷⁶ N. Ford, “The role of civil society in protecting public health over commercial interests: Lessons from Thailand” 363 *The Lancet* 2004, pp 560-563.

⁷⁷ M. Reichenberger, “The Role of Compulsory Licensing in Unilateral Refusals to Deal: Have the United States and European Approaches Grown Further Apart After IMS?”, 31/2 *Journal of Corporation Law* 2006, pp 549-565; D.M. Gitter, “International Conflicts over Patenting Human DNA Sequences in the United States and the European Union: an Argument for Compulsory Licensing and a Fair-Use Exemption”, 76/6. *New York University Law Review* 2001, pp 1623-1691.

V. Guimaraes/C. Sternberg, “Brazil’s AIDS controversy: antiretroviral drugs, breaking patents, and compulsory licensing”, 60/3. *Food and Drug Law Journal* 2005, pp 471-477.

⁷⁸ WHO’s Commission on Intellectual Property Rights, Innovation and Public Health: *Public Health, Innovation and Intellectual Property Rights*. WHO Geneva 2006.

⁷⁹ M. Heller/R.S. Eisenberg, “Can Patents Deter Innovation? The anticommons in Biomedical Research”. 280 *Science* 1998, pp 698-701.

⁸⁰ N. Turner, “The pharmaceutical industry has been a powerless spectator to the carnage of HIV/AIDS in Africa. Pharma needs to keep a cool head in the face of global criticism”, 21/8. *Pharmaceutical Executive* 2001, pp 44-60.

patent protection in their country. *The Manufacturing Chemist* offers the following statistics: “Patent protection for HIV/AIDS drugs exists in just over 20% of 53 African countries and in 13 countries, no patents at all were found”.⁸¹

IFPMA, the international pharmaceutical association, stresses that the pharmaceutical industry has contributed US\$ 2 billion in healthcare efforts in developing countries through direct access initiatives, providing HIV/AIDS drugs at lower cost, below cost or even free of charge in certain countries and has repeatedly used differential pricing and parallel imports as a means to provide medication to the poor.⁸²

A Third Way?

Can IP be managed in the public interest? Does the IP system provide scope to assure health for all?

A minority school of thought has taken a more pragmatic approach and asks what type of policy choices may work towards obtaining social inclusion and equitable distribution of research and development findings within the existing intellectual property framework.⁸³ Not seeking substantive reform of the intellectual property system, NGOs such as MIHR, the Centre for Management of Intellectual Property in Health Research and Development, PIIPA, the Public Interest Intellectual Property Advisory Group, PIPRA, Public Interest Intellectual Property Resources for Agriculture or SIPPI, Science & Intellectual Property in the Public Interest have sought to raise awareness and identify intellectual property strategies that promote equitable access through humanitarian licensing, non-exclusive licensing or other public sector intellectual property policies.⁸⁴ These approaches have been less reflected within academia and the WHO.⁸⁵

The discipline considers itself as “public interest IP management” and seeks to offer policy choices on how to reconcile the apparent contradiction between the exercise of exclusive rights and the universal right to equitable access to health. Representatives of this line of thinking argue that managing the IP system does not equal administering the IP system. It demands strategic thinking on the role of IP so to counteract existing asymmetries and gaps. Public interest IP management argues that the IP system cannot be viewed in isolation, but is part of a wider matrix of policy choices regulating property. It is the successful interplay of a variety of various policies, such as antitrust, free speech, privacy, telecommunications law, tax law, international trade law and intellectual property law that makes or breaks the success of public policy aiming at assuring equity and equality.

⁸¹ S. Houlton, “Paying the price for protection”, 73/12. *Manufacturing Chemist* 2002, pp 22-25.

⁸² E. Noehrenberg, “Improving Equity Access to Medicines. IFPMA reacts to Oxfam report on TRIPs”, *Pharmaceutical Market Letter* Nov 20 2006, pp 23-27.

⁸³ C. Garner, *Dealmaking and Intellectual Property Management for Public Interest*, Oxford 2004: MIHR; R. Mahoney/A. Pablos-Mendez/S. Ramachandran, “The Introduction of New Vaccines into Developing Countries. The Role of Intellectual Property”, 22/5 *Vaccine* 2004, pp 786-79.

⁸⁴ <http://www.mihr.org>; <http://www.pipra.org>; <http://www.sippi.aaas.org>.

⁸⁵ A. Krattiger, *Golden Rice: A Case Study of Humanitarian Licensing*, MIHR Oxford 2004; M. Qaim/A. Krattiger/J. von Braun/R. Evenson, “Agricultural Biotechnology in Developing Countries: Toward Optimizing the Benefits for the Poor.”, 40/2 *Quarterly Journal of International Agriculture*. 2001, pp 187; H. Egelyng, “Evolution of Capacity for Institutionalized Management of Intellectual Property at International Agricultural Research Centers”, 8/1. *Journal of Agrobiotechnology Management & Economics* 2005, pp 7-17.

IP and Counterfeiting/Piracy

Timeline and main actors

While the TRIPs agreement marked the beginning of the discourse on IP, globalization and health, it did not have the same impact on the debate on IP and counterfeiting/piracy. Rather, the TRIPs agreement allowed rights holders to rely on minimum levels of IP protection in all WTO members, thus guaranteeing the enforcement of rights and the opportunity (at least in theory) to sue infringers. In this sense, advocates of the IP system considered the TRIPs agreement a major breakthrough since it enabled the internationalization of the knowledge-based economy. Trading creative expressions, products and services of the human mind is thus facilitated through an international treaty allowing clear distinctions to be made between what lies within the realm of law and what does not.

Proponents of the discourse on counterfeiting and piracy are primarily governments, industry associations (e.g. the Business Software Alliance and the International Chamber of Commerce), customs (World Customs Organization), trade agencies, as well as the police (Interpol).⁸⁶ NGOs have surprisingly remained silent on the issue and no anti-globalization activists or public health proponents have raised their voice in this debate, definitely not making the point for stronger IP protection, but neither fighting against it. The most recent historical event worthwhile mentioning may be the 2007 US/EU agreement to combine in their fight against counterfeiting and piracy.⁸⁷ Also, the OECD was granted funding to revise its 1998 study on the economic impact of counterfeiting and piracy and the calculation of their cost to the global economy.⁸⁸ WIPO held, jointly with external partners, one of the biggest meetings in the history of the organization in January 2007 on counterfeiting and piracy.⁸⁹

What's in the mind of the consumer?

Possibly because the discourse on counterfeiting and piracy is maintained by a different set of actors than those engaged in the discourse on IP, globalization and health, there is data on how consumers think about the issue. Based on 65,000 interviews in 51 countries conducted over a period of 18 months, Gallup found that one fourth of consumers purchase counterfeit goods. These goods may be branded apparel, bags, footwear, music or movies. In another survey, conducted in the US among 1,300 adults in 2005, Gallup found that 13% of Americans bought or sold

⁸⁶ *Intellectual Property: US Efforts have contributed to Strengthened Laws overseas, but challenges remain.* GAO Report 04-912-2004: Washington D.C.; "CBP Supports EU-US action strategy for enforcement of IP", Fed News June 23 2006; "IPR -Capitol Hill hearing testimony", CQ Congressional testimony, November 7 2007; "US names IP enforcement chief in Asia", *States News Service*, January 5 2006; "Counterfeiting and Theft of Tangible IP", Capitol Hill Hearing Testimony. Federal Document Clearing House Congressional Testimony. March 23 2004; "IP and Beyond: Why Protecting it is Everyone's Business", Cisco White Paper C11 41 8387-00 7/07, San Francisco 2007; "Microsoft announces new initiative to combat counterfeit software and piracy", *PR Newswire US*, March 9 2006.

⁸⁷ "Intellectual Property Rights, Counterfeiting & Piracy" <http://useu.usmission.gov/Dossiers/IPR/default.asp>.

⁸⁸ OECD Project on Counterfeiting and Piracy, http://www.oecd.org/document/50/0,3343,en_2649_34173_39542514_1_1_1_1,00.html

⁸⁹ Third Global Congress on Combating Counterfeiting and Piracy. Geneva 2007; http://www.ccapcongress.net/archives/Geneva/Files/Ildris_final.pdf.

counterfeit products, but only 7% did so knowingly. In the same survey Gallup found that 60% are not familiar with the term 'IPR'.⁹⁰

Olswang found in a 2007 study among British consumers that people are much less willing to pay for audiovisual content, with free content being three times more often consumed than paid content. The computer is becoming increasingly an instrument of home entertainment and 63% of online users in the UK use YouTube. The illegal downloading of film and music is common and only "content junkies" are willing to pay for audiovisual content. Also, consumers are confused about the legality downloading and are scarcely concerned about getting caught. Only 34% of interviewees of this study believe it is wrong.⁹¹

Equally Mori Group, another UK market research company, found that considerations of the effect of counterfeiting and piracy on the UK economy did not particularly bother consumers. Consumers do not generally feel guilty when buying a counterfeit good at lower price, and copying a CD for a friend is seen as perfectly justifiable. According to the study, participants would also not feel comfortable about having infringers punished.⁹²

The findings of Mori Group stand in contrast to the Microsoft Counterfeit survey prepared by YouGov in 2006. The survey, which is based on interviews with 2000 UK adults, found that more than 52% of respondents considered the purchase of counterfeit goods as theft. People buy counterfeit goods primarily to save money. The most popular counterfeit items were movies, music, fashion, handbags and software. The survey also found that buyers would stop if they knew what other crimes were funded by the proceeds.⁹³

While in 2007 Price Waterhouse Coopers found that "demand for counterfeit luxury goods in the UK may be set to rise as consumers face a spending squeeze, but retain their appetite for luxury brands",⁹⁴ researchers such as Tscheber and Boigner argue that buyers of counterfeit goods may have a distorted personality or are not concerned with intellectual property protection.⁹⁵

⁹⁰ Chris Stewart: GALLUP Presentation given at the WIPO/OECD Expert Meeting on Measurement and Statistical Issues related to Counterfeiting and Piracy. Geneva October 17/18 2005; Gallup Organization, *Global Consumer Awareness, Attitudes, and Opinions on Counterfeiting and Piracy*, Third Global Congress Combating Counterfeiting and Piracy. Geneva, January 31 2007.

⁹¹ <http://www.olswangnews.com>.

⁹² MORI Social Research Institute: IP Public Attitudes, <http://www.ipsos-mori.com/understandingsociety/pdf/srnewsletter1.pdf> and: <http://www.programs.ssrc.org/ccit/publications/kretschmer-piracyagenda.rtf>.

⁹³ YouGov, Microsoft Counterfeit software survey, 21 December 2006, <http://www.itnews.com.au/News/52929,dvds-most-popular-pirated-goods.aspx>; <http://forums.lugradio.org/viewtopic.php?f=2&t=397>.

⁹⁴ PriceWaterhouseCoopers, "Managing the Risks of Counterfeit Products: The Effects of Celebrity Culture on the Luxury Goods Industry", PWC London 2007 (based on YouGov market research using ONS population statistics). Total sample size was 2,238 adults in the UK in 2007. Figures are weighted and are representative of all UK adults.

⁹⁵ pp Tscheber/A.Boigner, "Determinants of the purchase intention regarding counterfeit luxury products and software—an empirical study applying the theory of reasoned action", WU Wien Discussion Paper. Vienna 2004.

Common Themes

“Breeding a culture of respect for IP”

The discourse on counterfeiting and piracy relies strongly on legal premises; it stresses that IP can be “protected” and that intellectual property is a legal right rather than a business asset. IP enables worldwide markets to the extent that it operates to let players “defend one’s rights and protect oneself against infringers”. So far, it has not recognised that piracy and counterfeiting may have both positive and negative effects. While the conditions are not yet well researched, it appears that its impact on markets depends on the purchasing power parity of consumers in the relevant market.⁹⁶

“The war against piracy”⁹⁷

The discourse on counterfeiting and piracy shows many of the emotional elements of the discourse on IP, globalization and health.⁹⁸ Its proponents argue that there is a need to wage a “war” against piracy, to protect the “health” of the economy and to consider it a serious “threat” to prosperity.⁹⁹ “Patents are a *deadly weapon* in export war”, states the *South China Morning Post*, when discussing best practices to promote Chinese exports.¹⁰⁰ Counterfeiting is considered a “real threat” resulting in loss of jobs as well as revenue. The “health of the economy” depends on the outcome of the “economic war”, which can be won by fostering a culture of compliance—ideally at international level. To do so, TRIPs has provided a “robust” legal infrastructure and promoted a “strong” IP regime.¹⁰¹ To build public support for “tougher” enforcement worldwide, countries like the US have even nominated an enforcement chief for Asia, as well as several additional public relations initiatives. Counterfeiting and piracy are linked to terrorism.¹⁰²

⁹⁶ This issue is discussed further at p.23.

⁹⁷ “Winning the War against Piracy”, www.majormud.com/piracy.html; “Malaysia: War against Piracy targets Landlords”, <http://www.managingip.com/Article/1254383/War-against-piracy-targets-landlords.html>; “The MPAA Surrenders in War Against Piracy”, <http://www.pcmag.com/article2/0,1759,2019308,00.asp>; “Stealth war against CD piracy”, <http://news.bbc.co.uk/2/hi/entertainment/1524662.stm>; “China wages war against piracy”, http://www.chinadaily.com.cn/china/2007-03/17/content_830307.htm.

⁹⁸ L. Chalker, “Declaring War on Counterfeiters and Pirates”, 355: *African Business* 2007, pp 46-48.

⁹⁹ CISCO White Paper, “Intellectual Property and Beyond: Why Protecting it is Everyone’s Business”, Cisco 11-418387-00 7/07. San Jose 2007.

¹⁰⁰ “Patents a deadly weapon in export war: Mainland companies must build IP to guard against lawsuits”, *South China Morning Post*, March 22 2005; D. C. Stimson: “Counterfeiting in cyberspace”, <http://www.questia.com/googleScholar.qst;jsessionid=HSvW60qLGtbnhjmfcD7WTFx5DwK0fk87y8pH5THGyJJ2c tg0pBZ5!-264188374?docId=5001330306>.

¹⁰¹ “Counterfeit Goods Pose Real Threat; Counterfeit goods result in loss of jobs as well as revenue. But of even greater concern is the way this global black market is funding terrorist and criminal organizations”, The World, Industry Overview, http://goliath.ecnext.com/coms2/gi_0199-3283954/Counterfeit-Goods-Pose-Real-Threat.html; IPR -Capitol Hill hearing testimony. CQ Congressional testimony. November 7 2007; “Counterfeiting and Theft of Tangible IP”, Capitol Hill Hearing Testimony. Federal Document Clearing House Congressional Testimony, March 23 2004; P. Choate, *Hot Property. The Stealing of Ideas in An Age of Globalization*, Random House. New York 2005.

¹⁰² “US names IP enforcement chief in Asia”, States News Service, January 5 2006.

“Counterfeiting: the crime of the 21st century”¹⁰³

The discourse on counterfeiting and piracy borrows much vocabulary from the domain of crime. IP is to be policed, enforcement to be assured and potential infringers taken to court and, if found guilty, convicted of their crime, punished and imprisoned for a substantive period of time.¹⁰⁴ Buying fake goods is dangerous for consumers and may be linked to other serious organized crime.¹⁰⁵ To counter the risks, new initiatives such as software to detect counterfeits are needed in order to respond to the risks posed by counterfeits.¹⁰⁶

“Counting the costs”

The issue of quantifying the costs emerges as an important argument in the context of counterfeiting and piracy. In 2007 the OECD estimated that counterfeit goods and services cost worldwide US\$ 176 billion annually, which is about 2.4 per cent of world trade in manufacturing.¹⁰⁷ The OECD figure stands in strong contrast to a previous estimate given by the organization, where it was argued that counterfeiting accounted for 5 to 7% of international trade, as well as figures provided by industry and its representatives.

The Business Software Alliance estimates that, in the US, software piracy costs industry US\$ 11 billion in lost revenues and estimates that 35% of all software used worldwide is counterfeit.¹⁰⁸ The International Anti-Counterfeiting Coalition states that counterfeiting costs the US economy US\$ 200 million in lost revenues and US\$ 4 million in efforts to combat counterfeit goods. The IDC (International Data Corporation) Economic Impact Study found in 2007 that, if global software piracy was only lowered by 10% over the next four years, this change could contribute to 2.4 million new jobs and US\$ 400 billion in economic growth to the global economy.¹⁰⁹

US Fed News stated in 2006 that “the number of counterfeit items seized at EU borders increased by 1,000% from 10 million in 1998 to over 103 million in 2004”.¹¹⁰ The *Los Angeles Times*, quoting experts, even finds that counterfeit goods cost US companies about US\$ 200 billion annually, four times the equivalent figure for a

¹⁰³ The Anti Counterfeiting Group: Campaigning against the Trade in Fakes, The Crime of the 21st of Century. <http://www.a-cg.com/main.html>.

¹⁰⁴ Capitol Hill Hearing Testimony: “Counterfeiting and Theft of Tangible IP”, Federal Document Clearing House Congressional Testimony. March 23 2004.

¹⁰⁵ “Counterfeit Goods Pose Real Threat”, *ibid*.

¹⁰⁶ “Microsoft announces new initiative to combat counterfeit software and piracy”, *PR Newswire US*, March 9 2006.

¹⁰⁷ J. Dryden, “Counting the Cost: The Economic Impacts of Counterfeiting and Piracy”, Presentation given at the Third Global Congress on Combating Counterfeiting and Piracy, January 30/31 2007, <http://www.ccapcongress.net/archives/Geneva/Files/Dryden.pdf>.

¹⁰⁸ Speech by Deputy Attorney General Eric H. Holder, Jr. at the High Tech Crime Summit: The Business Software Alliance estimates that software piracy cost their industry more than \$11 billion in lost revenue in 1998. <http://www.USdoj.gov/criminal/cybercrime/dag0112.htm>.

¹⁰⁹ Business Software Alliance: The Economic Benefits of Lowering PC Software Piracy, http://www.bsa.org/sitecore/shell/Controls/Rich%20Text%20Editor/~media/Files/idc_studies/bsa_idc_australia_final%20pdf.ashx.

¹¹⁰ US Fed News, “CBP Supports EU-US action strategy for enforcement of IP”, June 23 2006.

decade ago. 70% of these illegal products are from Asia and most of them are from China.¹¹¹

Academic interest in counterfeiting and piracy has strongly focused on the notion of counting the costs. Researchers looked at the costs caused to entrepreneurial firms owning IP (Globerman, Wagstaff), particularly in the area of direct sales losses (Givon et al., Lowry et al.), the costs of brand erosion (Keller; McDonald and Roberts) and the costs of enforcement (Rice).¹¹²

“Headaches over online market places”

There is quite a vivid discussion on the role of IP enforcement on the internet. To what extent is eBay infringing IP? How can YouTube be controlled and how can cybersquatting and other domain name disputes be regulated?

While the fact is stressed that the online environment is regulated by the same rules and laws as the offline world, the digital age has still presented new challenges to law-makers.¹¹³ Napster’s peer-to-peer facility was ultimately shut down, viewed as having piracy as its very business model.¹¹⁴

YouTube may face similar challenges in the form of litigation by the record, film and TV industries. In addition to services provided by the internet, software piracy is another issue industry seeks to fight since it expects “enormous benefits from cutting it down”.

“The hidden hand will never work without the hidden fist”¹¹⁵

Critics such as Joseph Stiglitz assert that imitation is eventually something positive, a sign of respect, a form of recognition for one’s work. According to Stiglitz a counterfeit or pirated good is the best indication of successful marketing. Chinese argumentation is very much in line with this position.

Critics further argue that the discourse of enforcement in developing countries shows signs of asymmetry. It was unjustified to consider developing countries as “outlaws

¹¹¹ D. Costello, “Getting patents in other nations and doing your homework can help”, *Los Angeles Times*, May 22 2007.

¹¹² S. Globerman, “Addressing international product piracy”, 32 *Journal of International Business Studies* 2001, pp 497-504; J. Wagstaff, “Hungry pirates will pay”, 165/20 *Far Eastern Economic Review* 2002, pp 38—50; M. Givon/V. Mahajan/E. Muller, “Software Piracy: Estimation of lost Sales and the Impact on Software Diffusion”, *Journal of Marketing* 1995, pp 29-37; T. Lowry/C. Yang/C. Edwards, “Hollywood heist: Will tinseltown let techs steal the show?”, *Business Weekly*, July 14 2003, pp 74-82; K. L. Keller, “Conceptualizing, measuring, and managing customer-based brand equity”, 57 *Journal of Marketing* 1993, pp 1-22; G. McDonald/C. Roberts, “Product Piracy”, 3/4 *Journal of Brand Management* 1994, pp 55-65; D.A. Rice, “Copyright as talisman: Expanding property in digital work”, 16/2 *International Review of Law Computers & Technology* 2002, pp 113-133.

¹¹³ W. Adams, “Intellectual Property Infringement in Global Networks: The Implications of Protection Ahead of the Curve”, 10/1 *International Journal of Law and Information Technology* 2002, pp 71-131.

¹¹⁴ T. McCourt/P. Burkar, “When Creators, Corporations and Consumers Collide: Napster and the development of On-line Music Distribution”, 25/3 *Media Culture Society* 2003, pp 333-345.

¹¹⁵ M. Perlmann, “IPR and the Commodity Form: New Dimensions in the Legislated Transfer of Surplus Value”, 35 *Review of Radical Political Economics* 2003, pp 304-320.

and pirates”, particularly if the fight against so-called “piracy” worked towards the disadvantage of domestic industry.¹¹⁶

Less concerned with the development dimension of counterfeiting and piracy, de Castro/Balkin & Shepherd, and also Katz & Saphiro, argue that counterfeiting and piracy may actually benefit entrepreneurial firms.¹¹⁷ Referring to the resource-based view of a firm, Castro et al. argue that reducing the value of one resource (through counterfeiting and piracy) can directly increase the value of another. According to the authors the inimitability of an entrepreneurial firm’s IP does not necessarily diminish performance since piracy can increase the value of this resource by stimulating networks and provoking signaling and standard-setting effects. Conner and Rumelt have challenged the argument that software piracy harms entrepreneurial firms, arguing that piracy could increase the customer utility of a software program.¹¹⁸ Using a diffusion modeling approach on a sample of two types of software in the UK Givon et al. found that six out of seven software users used pirated copies.¹¹⁹ However, the pirated software generated more than 80% of new software buyers.

Discourse on various forms of IP

Among the various forms of IP, only patents and copyrights and related rights emerge as controversial subjects. While trade marks matter to a certain extent in the discourse on counterfeiting and piracy, as previously discussed, the overall discourse on trademarks and industrial design rights remains at a technical level and has not been subject to criticism or debate beyond expert circles. These forms of IP rights will therefore be downplayed for the purposes of this review.

Patents

“Intellectual property = patents”

The term ‘IP’ is very frequently used interchangeably with the term “patents”. Other forms of IP, such as trademarks and design rights, are not so “naturally” associated with the term “IP” and are less known to the general public. Contrary to other forms of IP, patents, particularly pharmaceutical patents, have strongly contributed to the negative connotations of intellectual property.

“Patents reward the individual inventor”

The most common argument put forward in the context of patents is that they reward the individual inventor/creator by creating an *ex-ante* monopoly situation and in this way provide an incentive for innovation. The image of the individual inventor operating out of *his* (within this view no linguistic space is left for female inventors)

¹¹⁶ A. Endesshaw, “IP Enforcement in Asia: A Reality Check”, 13/3 *International Journal of Law and Information Technology*, Oxford University Press 2005; B. Hogge, “Playing Catch Up. Arts and Culture”, *New Statesman*. November 2007.

¹¹⁷ J. de Castro/D. B. Balkin & D. A. Shepherd, “Can entrepreneurial firms benefit from product piracy?” 23 *Journal of Business Venturing* 2008, pp 75-90; M.L.Katz/C. Saphiro, “Network externalities, competition, and compatibility”, 91 *American Economic Review* 2001, pp 424-440.

¹¹⁸ K.R. Conner/R.P. Rummelt, “Software Piracy: An Analysis of Protection Strategies”, 37/2 *Management Science* 1991, pp 125-138.

¹¹⁹ M. Givon/V. Mahajan/E. Muller, “Software piracy: Estimation of lost sales and the impact on software diffusion”, 59 *Journal of Marketing* 1995, p.29-37.

garage is at best romantic, but has little to do with current markets which are increasingly based on network approaches. Nor does it reflect the full depth and scope of the managerial approach to IP. IP protects the various business segments of a firm, ranging from the looks of its products and packaging (industrial design), its recognition in the market (trade marks, geographical indications), to the protection of the new or improved functional features of products and services (trade secrets, patents). It is primarily the successful interplay of these different forms of IP, rather than patents only, that creates cash flows.

J. Barton observes that the use of patents depends on the competitive structure of the industry. In a horizontal oligopoly each company holds a substantial portfolio which is used to determine its freedom of action rather than to exclude competition.¹²⁰ This situation is typical in the biotechnology and semiconductor industry, where prevention of litigation is an important reason for using patents. If a competitor is likely to expect that a lawsuit would provoke a counter-suit, cross infringements may be seen as a deterrent, dissuading market participants from further legal action. Firms operating in “complex” technology sectors use patents mainly for negotiations and cross licensing,¹²¹ while far fewer firms in “discrete” product industries use patents for these reasons.¹²¹

While patents are used to block products of competitors, they also often serve as bargaining chips in cross-licensing deals, as well as to defend firms against infringement suits. Benefits of the patent may include the prevention of copying, the generation of licence revenue, strengthening of its owner’s position in negotiation with other businesses and enhancing a firm’s reputation.¹²² It is furthermore used as part of an effort to allocate rents between different levels of production or development. Many patents thus have an indirect impact on corporate cash flow.

Copyright and related rights

The discourse on copyright reflects several themes of the “IP and globalization” discourse. Does copyright prevent developing countries from taking advantage of the international trade system? To what extent does copyright prevent freedom of expression?¹²³ Is it a tool that allows big corporations to control cultural markets, while artists who are not superstars are suppressed in their work?¹²⁴ How can librarians assure free access to information while not violating copyright law?¹²⁵ Then

¹²⁰ J. Barton, “Competition and competitive uses of intellectual property” in Stanford workshop on intellectual property and industrial competitive standards 1998, <http://stlr.stanford.edu/STLR/Symposia/Antitrust/index.htm>.

¹²¹ R.P. Merges/R.R. Nelson, “On limiting or encouraging rivalry in technical progress: the effect of patent scope decisions”, 25 *Journal of Economic Behavior and Organization* 1994, pp 839-917; K. Kusunoki/I. Nonaka/A. Nagata, “Organizational capabilities in product development in Japanese firms”, 9 *Organizational Science* 1998, pp 699-718; D. Kash/W. Kingston, *Patents in the World of Complex Technologies*. Mason University Press: Mimeo 2000.

¹²² P. Han, “Intellectual Property Rights Business Management Practices: A survey of the Literature”, 26 *Technovation* 2006, pp 895-931.

¹²³ R. Wallis/C. Baden Fuller/M.Kretschmer/G.M. Klimis, “Contested Collective Administration of Intellectual Property Rights in Music: The Challenge to the Principles of Reciprocity and Solidarity”, 14/1 *European Journal of Communication* 1999, pp 5-35.

¹²⁴ T. McCourt/P. Burkart, “When Creators, Corporations and Consumers Collide: Napster and the development of On-line Music Distribution”, 25/3 *Media Culture Society* 2003, pp 333-345; A.W. Brian, “Increasing Returns and the New World of Business”, 9 *Harvard Business Review* 1996, pp 100-109; P. Samuelson, “Does Copyright Law Need to be Reformed?” *Communications of the ACM* Nr. 50/10, pp 19-24.

¹²⁵ K. Matsika, “Intellectual Property, Libraries and Access to Information in Zimbabwe”, 33, *International Federation of Library Associations and Institutions Journal* 2007, pp 160-178.

there is the big issue of open source software and the question as to what extent Microsoft is using copyright law to maintain its market position. All these issues are extensively discussed in the discourse on copyright.

“Make way for copyright chaos”¹²⁶

An important element of the debate is the perceived legal uncertainty provided under current copyright law, particularly in the context of online market places. Lawrence Lessig, Professor of law at Stanford University and a widely-recognized copyright expert, argues that in the US this uncertainty is due to the “safe harbor provision” of the 1998 Digital Millennium Copyright Act. Further discussion revolves around the question of the fair use clause.¹²⁷ In practice, this uncertainty has led to much litigation. Microsoft for example has attacked Google, since Google took the position that everything may be freely copied unless the copyright owner notifies Google.¹²⁸

“Speak freely, unless it is under copyright”¹²⁹

Advocates of free speech fear that the basis of liberal democracy, free speech, free will and free elections is being challenged by copyright law. A “copyright” rather than a “copyright”¹³⁰ “copyright curtails the public and developing nations’ right to greater access to knowledge by protecting the rights of a few at the expense of millions”.¹³¹ The fear of infringing another’s copyright may restrict free access to information. In this sense, copyright may even inflict damage upon constitutional rights: “Free speech washes like fluoride through the water supply, but as cultural assumption, rather than a constitutional right”.¹³² In this sense the mantra of IP, “this is my creation and you can not have it”, may stifle not only creativity but the very notion of freedom of expression.¹³³ Authors of Eastern European countries have raised similar concerns in the context of restructuring primarily communist-oriented legislation.¹³⁴

“My bit: unfair international treaties”¹³⁵

Studying the copyright acts of eleven East Asian countries, Consumer International found that ten of them have extended the duration of copyright protection for “some or all works beyond the minimum duration required by their obligations”. Again, this is a repetition of the theme, “playing catch-up in international relations”, but

¹²⁶ L. Lessig, “Make Way for Copyright Chaos”, *New York Times*, March 18 2007, p.7; W. N. Davis, “Downloading a File of Copyright Woes”, 93 *APA Journal* 2007, pp 101-110; H. Varian, “Copyright that no one knows about don’t help anyone”, *New York Times*, May 31 2007.

¹²⁷ N. Cohen, “Which Videos are Protected? Lawmakers get a lesson”, *New York Times*, February 26 2007, p. 4.

¹²⁸ pp Shachaf/E. Rubinstein, “A Comparative Analysis of Libraries’ Approaches to Copyright: Israel, Russia and the USA.”, 33/1 *Journal of Academic Librarianship* 2007, p.94-108; “Microsoft Attacks Google on Copyright”, *New York Times*, March 6 2007, p.5.

¹²⁹ M. Naphtali, “Speak freely unless it is under Copyright, too”, *Sony Music Entertainment*, February 27 2006.

¹³⁰ L. Lessig, *ibid*; John Frow, “Public Domain and the New Order of Knowledge”, 10/2. *Social Semiotics* 2000, pp 173-185.

¹³¹ K. Rajeswari, “My Bit: Unfair International Treaties”, Consumer International Asia Pacific Group, 2006.

¹³² Geoffrey Robertson and Andrew Nicol in M. Naphtali, “Speak freely unless it is under Copyright, too”. *Sony Music Entertainment*. February 27 2006.

¹³³ “Taking the Copyright Fight into a New Arena”, *The New York Times*, July 2 2007.

¹³⁴ M. T. Sundra Rajan, “Copyright and Tyranny”, *The Foundations of Socialist Copyright Law*, Routledge Studies in International Law. New York 2006.

¹³⁵ K. Rajeswari, *ibid*.

expressed in the specific context of copyright law. “Copyright and copywrong”¹³⁶ or “copyright and copyleft” are further illustrative examples of this line of argumentation.¹³⁷ According to these authors, “the imposition of IP is less about a legal issue than about a dictate from the winners of globalization”.¹³⁸

“Stealing beauty”¹³⁹

To what extent is our culture owned by big corporations?, asks James Clasper, reporting on an initiative of US artists to protest against corporate “greed”.¹⁴⁰ He reflects roughly speaking the argument of the open source movement¹⁴¹, which is not discussed further in this document.

Methodology: “What’s in a word?”

Discourse analysis reveals that various social realities co-exist and that each of the various value propositions relating to IP seeks to make itself the sole, ultimate truth. This review sought to take the opposite direction and “dismantle” many of the inherent assumptions associated with the two letter word “IP”.¹⁴²

In this sense, the review offers an important contribution, not by pointing the finger or arguing in favour of or against a specific view, but simply by illustrating the collectively-accepted social truth we all live by when speaking of “IP”. An examination of “IP” as a linguistic concept does not aim to discredit one position or promote another position; it rather seeks to demonstrate the linguistic space in which policy makers, business and NGOs operate. The issue is therefore not to determine who has a positive, “good” or “nice” view on IP and who has not, and to judge why this may be considered of disadvantage for a specific group or another. I am not in a position to make such ethical judgments. Rather, the issue is to create awareness as to the guiding principles of the current Intellectual property discourse.

International policy-making, corporate strategy and consumer advocacy do not take place in a vacuum or on a *tabula rasa*. Rather, various positions and views are created within a social space, a cultural setting, a common framework of understanding as to what certain terms mean. Within this context, language takes an essential role in creating and defining what that common basis of understanding is. The social setting in which market participants as policy makers alike interact is

¹³⁶ S. Vaidhyathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How it Threatens Creativity*, New York University Press, New York 2001.

¹³⁷ Ibid.; M. d’Antoni/M.A. Rossi, “Copyright versus Copyleft Licencing and Software Development”, <http://www.econ-pol.unisi.it/quaderni/510.pdf>.

¹³⁸ D. Shaw, *ibid.*

¹³⁹ <http://www.illegal-art.org>.

¹⁴⁰ J. Clasper, “Stealing Beauty-America’s harsh Copyright Laws are Ridiculed by an Exhibition of Illegal Art”, *New Statesman*, November 6 2006.

¹⁴¹ See eg “Open Source Lawyers Claim Microsoft Users Pay a Patent Tax”, *ePostal News*, May 7 2007; “Open Source Finance”, *Investment Dealer’s Digest*, February 27 2007; “Microsoft to Lease Some Ideas to Start Ups”, *New York Times*, May 5 2005; “IBM to Give Free Access to 500 Patents”, *New York Times*, January 11 2005.

¹⁴² R. Wodak (Hg.), *Zur diskursiven Konstruktion nationaler Identität. Suhrkamp*, Frankfurt am Main 1998; R. Wodak, *Totalitäre Sprache = Langue de Bois*, Passagen: Wien 1995; R. Wodak (Hg.), *Language, Power and Ideology, Studies in Political Discourse*, Benjamins, Amsterdam/Philadelphia 1989.

primarily created and maintained through the language that is in use. In this sense, language can be understood as collective labour.¹⁴³

This social setting in which the various groups act may be seen as one enormous theatrical production, with language as the main tool to keep the various scenes of the play going. In theatre, more than anything else, the linguistic view on global policy-making offers a lighter perspective upon “hard-core” decision-making.¹⁴⁴ A social reality, a collective context is created by using a specific set of codes or applying a term in a specific way. Perceiving IP, for example primarily through the legal lens, rejects the opportunity of seeing IP through the business strategy view.

By describing, analyzing, explaining, comparing and classifying objects and facts a term, word, statement, sign or brand, to put it in the language of business, creates a specific perspective on these facts and objects. It is the arrangement, the structure that the term imposes on this “outside” world that creates a *single* specific understanding of reality. In this sense, the term “IP” becomes a brand and can be understood as an essential element of this system. By providing categories of cognitive perception, IP if understood as a linguistic concept provides humans with a particular set of perceptions and representations in the world in which they live:

“One is not seeking therefore, to pass from the text to thought, from talk to silence, from the exterior to the interior, from spatial dispersion to the pure recollection of the moment, from superficial multiplicity to profound unity. *One remains within the dimension of discourse*”.¹⁴⁵

Language is a collective undertaking through which reality and worldviews are constantly created, recreated, maintained or dismissed. Reality, the borders of what is possible and what is not, is being defined through linguistic acts. Language is therefore not an ornament decorating an already existing social context; rather, language has the power to create the reality in which we live.¹⁴⁶ The market place or international policy space is therefore not a predefined setting, but a public space that is under permanent social construction, primarily through the language employed by its actors. It is language that has the power to create those social perceptions by which we have no choice than to live by and according to which decisions, be they political or business oriented by nature, are made. It is the language we speak that turns the social settings in which we operate and live into a permanent battlefield, where various positions on a specific subject are either legitimated or destroyed.¹⁴⁷

The success of the branding profession is a good indication for that argument. In the case of branding, these linguistic acts are strongly interwoven with the specific interests, usually economic in nature, of a given group. Intellectual property,

¹⁴³ R. Lafont, *Sprache als Arbeit*, [Paris 1978] Wien 1992.

¹⁴⁴ E. Goffman, *Interaktionsrituale, über Verhalten in direkter Kommunikation* [Cambridge/Massachusetts 1972], Suhrkamp, Frankfurt am Main 1999; E. Goffman, *Frame Analysis, an essay on the Organization of Experience*, Northeastern University Press, Cambridge/Massachusetts 1974.

¹⁴⁵ M. Foucault, *The Archeology of Knowledge* [Paris 1969] London/New York 1986, Barnes/Noble Books.

¹⁴⁶ M. Foucault, *Les Mots et Les Choses, Une Archéologie des Sciences Humaines*, Gallimard, Paris 1966; *Die Ordnung der Dinge*, Suhrkamp [Paris 1966]: Frankfurt am Main 1974; *Psychologie und Geisteskrankheit*, Suhrkamp [Paris 1954]: Frankfurt am Main 1968.

¹⁴⁷ N. Fairclough, *Language and Power* [1989] 11th edition: Longman: London/New York 1998; *Critical Discourse Analysis: the critical study of language*, Longman, London/New York 1995.

understood as a brand, is therefore not situated within an objectively pre-determined reality of facts and figures. The brand “IP” thus becomes an expression of a certain policy or business orientation (e.g. “anti-globalization”) and reinforces the views and perspectives of the respective speaker. Assuming that the brand “IP” is a value-free concept is an illusion, since there is no “zero degree of language” (in the sense of Roland Barthes) to which to refer.¹⁴⁸ If a set of linguistic statements to which branding belongs wishes to gain acceptance, it must manage to convey the message by offering the only—the one and only—ultimate solution to a problem; at the same time it must succeed in dismantling opposing positions and worldviews, thereby conveying the impression of being cohesive in its line of argumentation.

How this study was conducted

Since there is no single study that has analyzed the views, perceptions and general understanding of intellectual property, other than a recent study by IPAN on Awareness of IP and a Scenario Planning exercise on IP carried out by the European Patent Office, the review approached this question indirectly. Essentially, a random keyword search produced a selection of newspaper articles, press releases, academic papers, speeches of policymakers and documents of various international organizations, business and consumer organizations and NGOs. These written documents were analyzed according to the themes and context in which terms such as “intellectual property”, “intellectual property rights”, “patents, copyright, trade marks” are being used. Thus a text corpus was put together that could be analyzed, structured and categorized according to certain overarching principles common to the various statements.

This review derived its structure from the underlying themes that frame the general perception of IP. Rather than summarizing each article or the view of a specific organization (e.g. Oxfam, South Center, IFPMA), the context in which the term “IP” is used served as the guiding principle. Possible overall structures identified were themes such as “IP and the globalization discourse”, “IP and access to medicines” or “IP and technology transfer”. Attention was paid not only to the “said”, but also to the “unspoken and unsaid”, i.e. the silence, expressing possibly a lack of awareness¹⁴⁹, imagination or creativity to use and contextualize IP beyond established categories of thinking, policy-making or business strategy.

The review recognizes the value of a methodology mix, as for example undertaken by Petr Hanl who records that the number of publications dealing with patents in an economic context, as indexed in ECONLIT only rose to 251 between 1999 to 2002, compared to 39 between 1981 and 1984. However the review essentially relied on a qualitative approach by identifying underlying themes of research, policy making and business operations¹⁵⁰ (i.e. “compulsory licensing”, “technology transfer” “stronger intellectual property rights”). In doing so, it gave particular recognition to key institutions or individuals who frame current perceptions on IP, applying the methodologies used by discourse analysis and more broadly expressed by the

¹⁴⁸ R. Barthes, *Le Degré Zéro de l' Ecriture*, du Seuil, Paris 1953.

¹⁴⁹ UK Intellectual Property Office: UK Intellectual Property Awareness Survey 2006, prepared by R. Pitkethly. Said School of Business. Oxford University 2006.

¹⁵⁰ pp Hanl, *ibid.*

“Frankfurter Schule”, which argues in favour of qualitative research as a methodology in empirical social sciences.

Working Steps

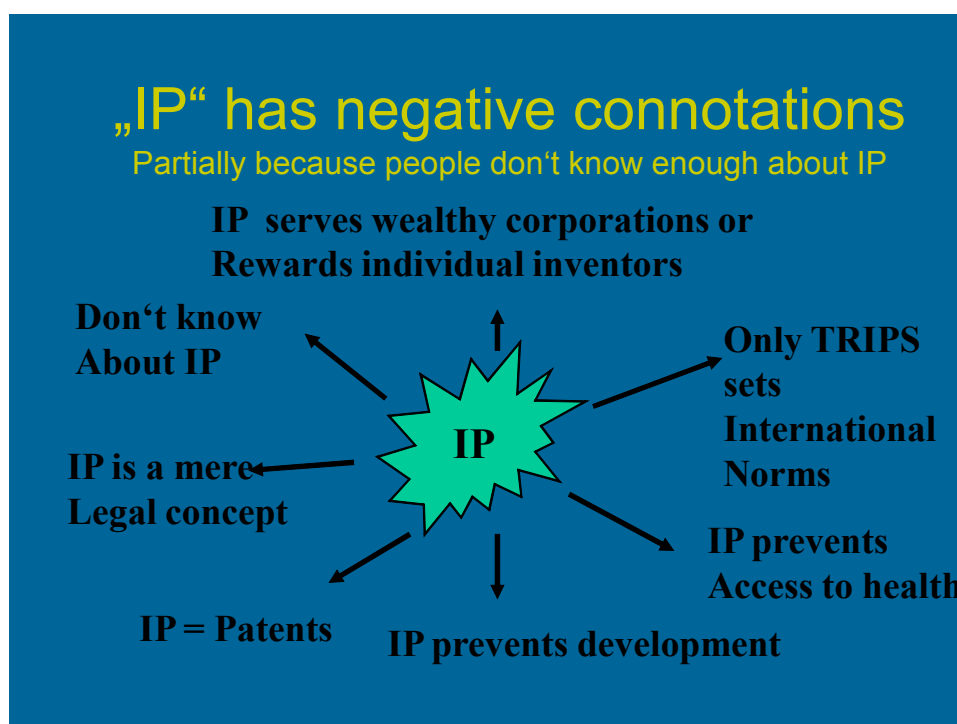
The review was conducted in the following working steps:

- A text corpus was created by reviewing relevant databases, such as LexisNexis, Business and Industry Database, Business and Industry Report, Wall Street Journal, Business Source Premier, EconLit, CompuStat, GallupBrain, Global Market Information Database, Mintel Reports, Market Research Academic.
- A keyword search included the following terms: patent & compulsory licensing, globalization, IP assets, IP and access to health, technology transfer, strong IP rights, IP litigation, IP—China, Russia, counterfeiting, innovation, have and have nots, winners and losers, TRIPs.
- An author search specifically evaluated the work of authors such as James Love, Oxfam, Stiglitz, WHO, WIPO, IFPMA, Medecins sans Frontières, IIPi, IPI, Trilateral Offices or METI Japan.
- The review of relevant academic publications included the Berkeley electronic press, Cambridge electronic press, Oxford University Press, Science Direct, Scirus, Proquest Direct, Wiley, Chicago University Press, Emerald, Springer, Sage Journals Online,
- Furthermore relevant websites of a set of institutions, policymakers, corporations, business and consumer associations were reviewed so to identify themes associated with the term IP. Subsequently the collected material was analyzed and it was sought to understand the presentation, documentation, analysis and interpretations of the various themes, perceptions, views and connotations related to IP.

Conclusion

“Lack of awareness on IP”

While it is difficult to document silence, the unspoken is sometimes more telling than the outspoken. IP is still unknown to many, particularly key decision-makers. Policy makers would not view IP as an issue with which to win votes. Equally, corporate CEOs would not necessarily say that it is IP that makes or breaks their business success, making it hard to raise awareness of the necessity to adequately manage intangible wealth.



Language comprises not only written and oral expression, but any type of sign that humans find useful to interact with each other. As such, this review took a narrow perspective when assessing the policy dimension of the current discourse on intellectual property. In a second step it would be worthwhile exploring “IP talk” in face-to-face interviews, meetings held at international conferences or assess in-depth the discourse of one specific set of actors, such as the press.

This being said, this rough analysis of the current discourse on intellectual property shows a remarkable polarization of positions, where NGOs can be found at one extreme and business at the other. The positions are clear and straightforward. According to the material assessed, none of the actors takes a position that would reflect the enabling opportunities of the IP system as well as potential threats it poses to the disadvantaged of the global economic system.

The TRIPs agreement marks the era of a new form of discourse on IP. The treaty can therefore be considered as a catalyst provoking a shift in perspectives. In this context IP becomes an increasingly overloaded concept and is by many seen as a sort of gatekeeper to postcolonial aspirations. Moral questions are repeatedly asked and the concept of IP gets intertwined with catchy policy issues such as globalization and public health. While at the national level IP remains more or less a technical non-issue, at the international level it increasingly contributes to heated debates.

In this discourse the notion of IP appears to be frequently mixed with the power of companies and markets in general. It is hardly considered or discussed in a way that would allow it to address issues of public concern, such as public health, climate change or the protection of the environment, in an enabling way. While terms such as 'innovation' and 'progress' have a positive connotation, 'intellectual property' is either unknown to the general public or associated with threat and danger.

Proponents of the IP system have so far not contributed to a shift in these perceptions. The strong emphasis on a "fight" against counterfeiting and "piracy" is not of assistance in this respect since it does not remove the suspicion of civil society that IP may help to increase the gap between the rich and the poor, the haves and the have not and that it contributes to the overall acceleration of the deterioration of living standards and social safety-nets due to increased competition at international level. On the contrary, the emphasis on a "fight against pirates" may even further increase the strong skepticism that many have when addressing intellectual property issues. Consumer surveys indeed suggest that the criminalization of IP infringers is not seen as a primary concern by the public at large, which usually knows very little about intellectual property.

Contemporary IP talk derives much vocabulary from the domain of war, military and football. Proponents of the IP system as well as anti-IP activists, repeatedly use vocabulary such as "war", "fight" "defeat", "combat", "win" or "lose". This type of language not only reveals that IP seems to turn increasingly into a global battlefield but also that neither side is proactively looking for solutions and joint approaches to problems of global concern. This is to be regretted since battles only create more casualties which, I believe, is in no-one's interest. Further research may therefore evolve around questions such as managing IP in the public interest or the role of IP in public private partnerships for health or environmental protection.

Annotated Bibliography - Tables 1 - 15

The annotated bibliography was prepared by Janine Kischl. Janine Kischl is a M.A. candidate in international relations at St Andrew's College. She gained her Bachelor's degree in international relations at Webster University.

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Table 1 – IP in General

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	LOCATION
IP			Against the Domination of Exclusionary Rights on the Knowledge Economy."	Swiss Internet User Group	2007	N	Substituting countries IPR obligations under international treaties with research obligations, Medicine: Countries should use the flexibilities in the international patent system which allow for competition in the manufacture and distribution of medicines --> substituting countries IPR obligations under international treaties with research obligations	http://www.saug.ch/URG/declaration-2007-05-23.pdf
IP	Academia		Proprietà intellettuale e risarcimento del danno	Università Degli Studi "Roma Tre" - Facoltà Di Giurisprudenza - Dipartimento Studi Giuridici	2007	Y	IP to be enforced, infringements to be punished	http://www.giappichelli.it/home/88-348-5540-X,3485540.asp1
IP		Perelmann, Michael	The Political Economy of Intellectual Property		2003	N	Stronger IP rights will reinforce class differences, undermine science and technology, speed up the corporatization of the university, inundate society in legal disputes, and reduce personal freedoms. Undermines science, burdens the economy with expensive litigation, and infringes on personal freedom. To make matters more absurd, public research forms the basis of the great advances in IP	http://www.questia.com/PM.qst?a=o&d=5002512768
IP		Devarakonda, Ravi Kanth	The G-5 force a key change on intellectual property rights	IPS (Latin America)	2007		But the G8 now wants to shift the forum; from a neutral multilateral setting to a body like the OECD in which its members can dictate the outcomes, said Rohit Malpani, trade policy adviser from the development charity Oxfam	
Managment	Business	Chesbrough, Henry	Microsoft Should Welcome Piracy in India and China	Business Week Online	2007	N	Microsoft should welcome piracy in India and China, for easing up would ensure customers not to use Linux instead, shortsighted of Microsoft? IP management must regionally differ in India and US. Driven by business perspective, not legal one	Academic Search Premier. EBSCO. 11 Nov. 2007

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	LOCATION
Managment		Renes, Johan	Managing Intellectual Property	Euromoney Institutional Investor 172 (2007): 91-93	2007	Y	Knowledge based societies and economies need to share IP information, initiatives by the Dutch government	Academic Search Premier. EBSCO. 11 Nov. 2007
Russia		Winther, Dominique	Six in Ten Owners Say IP Protection in Russia Improved	Coalition for Intellectual Property Rights	2006	Y	Few respondents said that IP protection is a priority of the Russian government. Even fewer said that government agencies responsible for IP protection and enforcement are effective, but improvements pursued	http://www.cipr.org/activities/findings/eng/pressrelease_052406.htm
		Evans, Gilen A.	The Human Genome Project and public policy	Public Understanding of Science	1999			http://pus.sagepub.com/cgi/content/abstract/8/3/161
	Business		Intellectual Property and Beyond: Why Protecting It Is Everyone's Business	Cisco		Y	Companies should assess the level of worth of their intellectual property when considering how to protect it - company should accord the greatest protection to the information assets that are most important to the business	
IP	Academic	Boldrin, Michele / Levine, David K.	Intellectual Property in a Global Economy			-	Academic View: IP a "necessary evil", Optimal IP is not related to market size, US EU standard is necessary for global trade - Business View: IP protection must increase with globalization, IP good for business, Imitation = Piracy -> Practically no link between IP protection, R&D expenditure, growth, Harmonization should take place through a convergence of protection to the mean, not by raising to the max. As trade and growth increase market size, harmonized levels of IP protection should monotonically decrease, in analogy with tariffs.	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	LOCATION
Incentives				Country Commerce. United Kingdom; 2007, p22-25, 4p	2007		This section describes the different types of incentive in Great Britain. For large companies, research and development incentives are given in the form of tax credits and collaborative projects. To fund science, technology and engineering initiatives, the Department for Business, Enterprise and Regulatory Reform (BERR) operates industry-specific incentives. The country also offers tax and other forms of regional incentives. Many foreign firms have licensing pacts with British manufacturers. The courts are generally helpful in enforcing licenses rights, but when these interfere with free trade within the European Union, the single market generally takes precedence, under the exhaustion of rights doctrine. Inward licensing of technology is particularly prominent in electronics, biotechnology, mechanical engineering (including vehicles) and chemicals. Since royalties are deductible expenses, virtually all foreign manufacturing and	The Economist Intelligence Unit Limited
Licensing				Country Commerce. Brazil; 2007, p33-40, 8p	2007		The country's Industrial Property Code revised patent protection, which ended the non-patentability of food, chemical, pharmaceutical and biotechnology products in Brazil. It states that the National Institute of Industrial Property has increased its enforcement efforts to address the problem of trademark infringement. It is inferred that negotiating licenses in the country has become easier as such agreements gain more adherents. Brazil has in recent years entirely replaced its legislation on intellectual property. The country has started attracting ever-greater amounts of licensing, including use of trademarks, technology transfer and franchising. This marks a dramatic turnaround from the 1990s, when such transactions were difficult because of strict administrative supervision, legislation heavily biased towards the licensee and widespread illegal abuse of intellectual property	The Economist Intelligence Unit Limited

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	LOCATION
Metaphors		Loughlan, Patricia	Pirates, Parasites, Reapers, Sowers, Fruits, Foxes ... The Metaphors of Intellectual Property	The Sydney Law Review	2006		The premise of this article has been that in law, and, specifically, in intellectual property law, metaphor matters and metaphor clusters may have significance beyond what could be apparent from any individual use in a judgment or in an article of one of the metaphors under consideration. The existence and prevalence of the 'pirate-predator-parasite' metaphors and the agrarian 'reaping and sowing' and 'fruits of labour' metaphors, even in apparently neutral, non-partisan legal writings like judgments and textbooks, merit some analysis. Both of those sets of prevalent metaphors favour those who own intellectual property rights and not those who use products covered by intellectual property rights without the authorisation of the owner. It may be more difficult to make fair and rational decisions about appropriate levels of intellectual property protection if the decision-maker is hearing, reading and participating in a discourse in which unauthorised users of intellectual property are put into a category which includes the malarial amoeba and the intestinal tapeworm.	LexisNexis
	Business	Sell, Susan K. REVIEWED by Ho, Cynthia M.	Private Power, Public Law	Emory International Law Review	2004		Private Power, Public Law is an engaging story about the dynamic actors and settings that set the stage for the negotiation of TRIPS as well as its subsequent developments. Sell has clearly made the case that private actors who effectively frame their positions - in an appropriate environment - can effect change on both national and international levels. framing intellectual property within the "rhetoric of "free trade" was also an effective tactic	LexisNexis

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	LOCATION
Media		McElhinney, Stephen	Exposing the interests: decoding the promise of the global knowledge society	2005; 7; 748New Media Society	2005		knowledge should not be monopolized and deployed for the benefit of a relatively small and advantaged section of the population. Through examples drawn from Australia, India and Kenya, it is evident that the orthodox means of deploying technology and controlling knowledge continues the trend to skew benefits towards those able to deploy policy and regulatory influence. This can be achieved through the introduction of more democratic and representative means to determine the economic and social application of knowledge, through the reconfiguration of international organizations such as the WTO and through implementation of social impact statements.	Sage
Media		McCourt, Tom and Burkart, Patrick	When Creators, Corporations and Consumers Collide: Napster and the Development of On-line Music Distribution	Media Culture Society 2003; 25; 333	2003		The development of the information-based 'New Economy' is due in large part to the growth in industries that trade in intellectual property. A&M Records et al. v. Napster firmly established the on-line intellectual property rights of entertainment industry conglomerates and reinforced the Big Five's existing market oligopoly. The recent litigation surrounding on-line music delivery is intended to protect the Big Five's intellectual property rights on the Internet and allow it to create additional revenue streams, but the implications of this litigation are much broader.	Sage
Media		Uguccioni, Jessica	New Media and the Creative Industries' report: bias over balance in copyright reform?	Journal of Intellectual Property Law & Practice, 2007, Vol. 2, No. 9	2007		House of Commons Culture, Media and Sport Committee panoply of measures for fighting piracy right - introducing a new criminal offence, of camcording in cinemas (ii) exhorting the internet services provider and search-engine industries to 'do more.... The Committee treats copyright as a regular commodity. It fails to recognise the unique nature of copyright as a form of state-granted monopoly. The credibility of the Committee's proposals is fatally undermined by its entrenched failure to give any weight to the public interest in the IP trade-off, which is vital to a healthy IP system.	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	LOCATION
Access to Information		Matsika, Kathy	Intellectual Property, Libraries and Access to Information in Zimbabwe	IFLA Journal 2007; 33; 160	2007		A lot of advocacy is still required to raise awareness in institutions and at government and national level. A shift in thinking is essential before academics and researchers can readily accept the idea of first publishing their articles and research output in institutional repositories.	
IP		Belk, Russell	Why Not Share Rather Than Own?	The ANNALS of the American Academy of Political and Social Science 2007; 611; 126	2007		In the case of the Internet, we shall see whether the increase in sharing or the simultaneous increase in intellectual property rights it has inspired will ultimately. As we have replaced social security with financial security, trust in money and things have supplanted trust in people, and economic capital has become more important than social capital. Interestingly, it is business that shows a trend toward less possessiveness and materialism. Virtual corporations retain the right to their intangible brand names but freely outsource everything else from production to management, marketing, and customer service. It is more economical and necessary to remain competitive predominate in cyberspace	http://ann.sagepub.com/cgi/content/abstract/611/1/126
Awareness		Page, Ben	Intellectual Property: Public Attitudes	MORI Government Research	2000		IP has a low level of awareness and understanding amongst the general public, not most important part of people's lives, need to tackle perception that companies are making too much money	
Internet		Weber, Rolf H.	Does Intellectual Property become unimportant in Cyberspace?	International Journal of Law and Information Technology, Vol 9. No. 2 Oxford University Press	2001		Technological developments direct prevailing decline of IP law for new techniques lower the importance of respective legal provision - new application fields of IP law appear at the horizon compensation through increased importance of competition (antitrust) law combined with constitutional aspects --> change will shift from producer-oriented approach to user-oriented approach	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	LOCATION
IP Enforcement		Teng, Simon	Understanding IP enforcement in the United States and beyond	Journal of Intellectual Property Law & Practice, 2007, Vol. 2, No. 12	2006		Book Review: Protecting Intellectual Property Rights across Borders - in-depth discussions on border protection for trade marks, copyrights, and patents. In the area of patents, a 'bifurcated system' for border protection exists. A recurring theme in this book is that an effective IP border enforcement system is largely dependent on the continuous and active partnership between private industry and government. In the USA the border enforcement authority is US Customs and Border Protection (CBP). This US agency is under the Department of Homeland Security (DHS). The authors write that IP owners 'must take responsibility for the training and education of Customs for the protection and enforcement of their IPR assets. . .'	
Technology		Lucchi, Nicola	The Supremacy of Techno-Governance: Privatization of Digital Content and Consumer Protection in the Globalized Information Society	International Journal of Law and Information Technology Vol. 15 No. 2 © Oxford University Press 2007; all rights reserved doi:10.1093/ijlit/ea010 Advance Access Published on 13 September 2006			New communication technologies have increased the difficulties of maintaining a balance between the inherently contradictory interests of intellectual property rights-holders and the general public. In particular, we have observed how access to digital content and information is not only an economic problem, but also a cultural, social and political issue. The legislative solutions under U.S. and E.U. law have expanded the legislative boundaries of intellectual property rights and embedded technical and contractual constraints into digital media. Furthermore, these acts have caused an inappropriate delegation of governmental decision making to a non-governmental entity with a consequent privatization of the government's role in protecting intellectual property and in setting technical standards for digital infrastructure and interoperability	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	LOCATION
Biological Diversity		McNeely, Jeffrey A.; Rojas, Martha; Martinet, Caroline	The Convention on Biological Diversity: Promise and Frustration	The Journal of Environment Development, 1995; 4; 33			Thus, in discussing the additional issues that had been proposed by the second meeting of the Intergovernmental Committee on the Convention on Biological Diversity (ICCBD2) for consideration of the COP1 on, for example, biosafety, intellectual property rights and indigenous people, the tendency was to move backwards.(OECD) and the G-7 countries tended to focus on issues of conservation of biodiversity components, maintaining access to genetic resources and protecting their intellectual property rights on technology. Not surprisingly, many NGOs and a number of the G-77 countries felt that intellectual property rights should be dealt with as part of a cluster of issues including access to genetic resources, community rights and knowledge systems, indigenous knowledge and practices, and the equitable sharing of benefits from the utilization of biological resources.	http://jed.sagepub.com/cgi/content/abstract/4/2/333

Table 2 – IP and Access to Health

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Access to Health		Barton, John	Intellectual Property Rights 'Harm Poor'	Stanford University, BBC News	2002	N	In the case of developing countries, more and stronger protection is not necessarily better. Poor countries may be harmed in the areas of health, agriculture, education and information technology. IP to drive up the overall cost of medicines in poor countries if nothing is done	http://news.bbc.co.uk/2/hi/science/nature/2253270.stm
Access to Health		Choate, Pat				Y	Concedes that drug prices are too high for most of the world's HW patients, but market forces and bilateral negotiations might alleviate the price issues, criticizes the life-saving compulsory-licensing policies instituted by India, Brazil, and South Africa, calling them "piracy" and "theft" instead of "treatment" and "healing"	
Access to Health		Kerr, Joanna	State of Our Globe - Globalization & Women's Health	Fall 2003., Iss. 60/61; pg. 23	2003	N	TRIPS largely ambiguous instrument that could seriously endanger women's rights and health, as allows transnational corporations to appropriate, patent and profit from indigenous knowledge and life forms, These benefits they get without having to compensate the communities from which they acquired the knowledge	
Access to Health		Light, Donald W,	Globalizing Restricted and Segmented Markets: Challenges to Theory and Values in Economic Sociology	Annals of the American Academy of Political and Social Science. Thousand Oaks: Mar 2007. Vol. 610 pg. 232	2007	N	Pernicious competition: alternative to the better known concept of market failure to more accurately describe what happens when vital human needs are not efficiently met as a result of global competition. The extended protections of intellectual property in new free trade agreements are an example of market segmentation being used to raise the prices of and reduce access to vital drugs for treating patients with HIV-AIDS.	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Access to Health		Milstien, Julie et alt.	The Impact Of Globalization On Vaccine Development And Availability	Health Affairs. Chevy Chase: Jul/Aug 2006. Vol. 25, Iss. 4; pg. 1061, 9 pgs	2006		Globalization is likely to affect many aspects of public health, one of which is vaccine-preventable communicable diseases. Important: wide-spread intellectual property rights provisions through WTO agreements	
Access to Health		Beattie, Alan; Jack Andrew; Kazmin, Amy	Patent or patient? How Washington uses trade deals to protect drugs intellectual property	Financial Times , London, England	2006		While US trade representatives push for tough patent rules in the interests of national pharmaceutical manufacturers, for example, Washington regulators at the Food and Drug Administration recently began approving foreign-made generic copies of anti-retrovirals, On one side are those who argue that stronger patent protection will keep drug prices too high to meet the needs of developing-world patients. Pitted against them are others who insist innovation is under threat and the real problem in poor countries is a lack of hospital facilities and medical staff. Dr Aldis: It will be a threat for people all over the world, not just for the Thai people	
Access to Health		Medecins sans Frontières	Patent or patient? How Washington uses trade deals to protect drugs intellectual property	Financial Times , London, England	2006	N	World Aids conference in Toronto: Calling for a moratorium on free-trade provisions that threaten access to treatments, demanding hat governments "protect the public from the potential negative consequences of bilateral and regional trade agreements on public health".	
Access to Health		Santoro, Lara	Forget the patents on AIDS drugs; Third World nations have the right, and the duty, to produce generic versions.	Los Angeles Times	2007	N	Despite death on an unimaginable scale, talk of compulsory licensing remains anathema in most of Africa, so millions of lives are left in the hands of a well-meaning yet ineffectual group of international donors, whose solution to the problem has been to purchase and distribute generic AIDS drugs made in India and Brazil. It's a noble effort, but with pitiful results. Fifteen years after the invention of antiretrovirals, only one in four Africans has access to themAfrican countries should find the resolve to follow Thailand's example and grant compulsory licenses when they see fit. In so doing, they would put an end to a drug monopoly whose human cost brings shame to us all	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Access to Health		Hoen, Ellen	Obstructive stance on generic drugs for poor	Financial Times , London, England	2006		Many countries do use compulsory licences to produce or import generic medicines, this will change when newer drugs will be patented under World Trade Organisation trade-related intellectual property rights (Trips) rules. Medecins Sans Frontieres spent three years attempting to use a Canadian law, based on this WTO decision, to buy drugs. It does not work. So it is encouraging that Pascal Lamy, the WTO director-general, recognises these limitations, because the difficulty of getting these licences will affect the countries that today have access to medicines under the Doha declaration	
Access to Health		Arif, Kader	Novartis gets in new campaign against cheap medicines	IPS (Latin America)	2007	N	Novartis is taking legal action against the law, which provides for patents on medicines to be refused on public health grounds, If Novartis wins the case, it is highly probable that many drugs will be patented in India and access to generic versions of drugs will be limited. This would be at the expense of millions of patients in the world whose lives depend on such drugs, in particular AIDS patients	
Access to Health		Ford, Nathan (Médecins Sans Frontières); Wilson, David, Angerer, Schoen	Forget the patents on AIDS drugs; Third World nations have the right, and the duty, to produce generic versions.	The Lancet	2004		In Thailand, civil society groups have been key to establishing the human right to health by challenging the practices of the multinational pharmaceutical industry and governments of industrialised countries . The pharmaceutical industry will continue to push for increased patent protectio. In Thailand, successful opposition has come from people with HIV/AIDS, who have fought for their rights by forming effective coalitions, bringing together a range of experience and expertise	
Access to Health			Research versus treatment for neglected diseases	The Lancet	2006		Most campaigns to invigorate efforts to combat neglected diseases focus on the absence of incentives for appropriate research and the high prices of drugs that result from intellectual property protection, Efforts to distribute drugs to all individuals with leprosy-a project that has made slow progress despite Novartis' commitment to providing the treatment for free-show that high drug prices alone cannot take all the blame.	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Access to Health		Panitchpak di, Supachai	World trade must not be tripped up by drugs	Financial Times , London, England	2002		TRIPS did not impede governments from taking measures they deemed necessary when facing national health emergencies. They agreed further that the Trips agreement provided necessary flexibility to allow governments to use provisions in the accord to gain access to medicines	
Access to Health		Williams, Frances	Poor nations press WTO to reach deal on cheap medicines	Financial Times , London, England	2003		Poorer WTO members have given warning that without a medicines agreement "nothing will happen in Cancun", which is supposed to set the course for concluding the Doha round of global trade talks by December next year. These efforts have centred on trying to reassure the big drugs companies that the deal would not lead to a flood of cheap copies of so-called "lifestyle" drugs such as Viagra or baldness cures, snatching profitable markets from the research-based industry.	
Access to Health		Reuters	European Union: Action To Help Poor Nations Get Drugs	The New York Times	2007	Y	The European Union will exclude medicine patent provisions from future trade deals with poorer countries to ease their access to cheaper drugs. A 1994 global trade agreement on intellectual property rights has restricted the development of affordable copycat treatments for poorer countries.	
Access to Health			Cheap drugs a done deal	The Weekend Australian	2003		A concluded trade deal allows the developing world to waive intellectual property rights on drugs used to treat epidemics such as AIDS, malaria and tuberculosis. Balancing the health needs of the world's poor with the commercial interests of large pharmaceutical companies was nigh impossible.	
Access to Health		Kimball, Ann Marie	The health of nations: happy birthday WTO	The Lancet	2006		With its protection of patents as intellectual properties, Trade Related Aspects of Intellectual Property Rights has provided motivated economies focused on patent protection a means to stymie access to life-saving drugs by poor countries heavily affected by HIV/AIDS. The Doha Agreement of 2001 specifically repudiated such efforts	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Access to Health		Murphy, Katherine, Maher, Sid	Drug lobby once more on to the 'breach' - Election 2004	The Australian	2004		Under global trade rules, producers must be free to enjoy their patent rights without discrimination -- and the legal advice concludes the Australian legislation implementing the FTA discriminates against manufacturers of patented drugs. Drug manufacturers in both the US and Australia are opposed to Labor Party amendments to the free trade deal designed to stamp out "evergreening", where manufacturers abuse the patent system to lock out cheaper generic pharmaceuticals	
Access to Health		Geist, Michael	Fairness calls for fairer rules	The Toronto Star	2005	Y	The one-sided nature of global intellectual property law is best illustrated by the legal protections granted to pharmaceutical products. Developed countries that are now home to pharmaceutical giants persistently resisted providing patents for pharmaceutical products until their industries were well developed. Last fall WIPO, which has been viewed by many as insensitive to the concerns of the developing world, approved a new development agenda. Initially proposed by Brazil and Argentina, it won support from developing countries from across the globe	
Access to Health	NGO	Saez, Catherine	Report Assesses IP NGOs' Impact On Developing Country Negotiators	Intellectual Property Watch	2007		The survey of the IP policy community conducted during 2006 found that international NGOs have been providing developing country delegates with tools to enhance their negotiating capacity	http://www.ip-watch.org/weblog/index.php?p=507
Public Health			Public Health, innovation and intellectual property rights	WHO	2006		Our Commission analysed the various effects of intellectual property rights on upstream research, the subsequent development of medical products in both developed and developing countries and the possibility of ensuring access to them in developing countries. We considered also the impact of other funding and incentive mechanisms and fostering innovation capacity in developing countries.	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Public Health		Correa, Carlos M.	Public Health and Intellectual Property Rights	Global Social Policy 2002; 2; 261	2002		The patent system has historically raised controversial views. While patents can stimulate inventions and their commercial application, they also have negative effects on the diffusion of new technologies and may be used to block further research and genuine competition. Pharmaceutical patents have an asymmetric effect in the North-South context: on the one hand, they foster the development of new drugs that contribute to health care and wealth creation in developed countries; on the other, patents impede broad access to such drugs in developing countries, while they fail to promote the development of drugs needed by the poor patent protection may be necessary for future investments in pharmaceutical R&D, but little of such investments are devoted to the diseases of the poor. The lives and well-being of millions of people in the developing world depend on that protection being effectively integrated with public health concerns	Sage
Access to Health		Calhoun, Doug	Gunning for Osama Big Pharma	New Zealand Management			New Zealand Patent Law: Restricting patent protection will have little or no effect on lowering the price New Zealanders pay for medicines. Pharmac has more than enough legal power already. Limiting patent protection strong negative effect on foreign direct investment in research	
Trade		Bale, Harvey E.	The Conflicts between parallel trade and product access and innovation in the case of pharmaceuticals	Journal of International Economic Law, Oxford University Press	1998		Connection between increasing global welfare and the liberalization of trade is widely accepted, question raised by incorporation of TRIP into the rules governing international trade is whether certain IP traditions are consistent with the aims and rules of WTO. In the case of pharmaceuticals, welfare effects on less developed countries could be serious in public health terms because price differentials are demanded by them and global health institutions, adding unacceptable risk to maintenance of quality in international distribution of pharmaceutical products	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Access to Health		Milstien, Julie and Widdus, R.	Facilitating Access to Vaccines: An Overview of Legal and Political Issues	Pharmaceutical Development and Regulation, Volume 1, Number 2, 2003 , pp. 101-116(16)	2003		The cost effectiveness of immunization is widely agreed. Thus, efforts to promote access to vaccines against diseases of public health importance have been a global goal. The following areas were considered for action: globalization of trade and the impact of Trade-Related Intellectual Property Rights (TRIPS), differential pricing strategies, regulatory considerations, product liability provisions, stockpiles and emergency rationing activities, and orphan vaccine legislation. Analysis of the options, proposed from the point of view of public health, resulted in the suggestion that the following approaches might be most useful: (i) institutionalizing differential pricing strategies while assuring that segregation of markets is maintained; (ii) development of regulatory pathways for developing market vaccines; (iii) ensuring that stockpiles, where used, are under rigorous project management; (iv) better liability protection for manufacturers; and (v) increasing the funds available for investment in vaccine R&D	
Access to Health		Badawi, Aboubakr A.	The Social Dimension of Globalization and Health	Perspectives on Global Development and Technology, Volume 3, Numbers 1-2, 2004 , pp. 73-90(18)	2004		Contrary to the hopes created by globalization, most observers report a substantial degradation of living standards, social protection, and basic social services, such as education, employment and health. Six main issues are addressed, namely, commercial exploitation of health plants, monopoly of health commodities, new food hazards, unfair implementation of intellectual property rights, marketing of tobacco and similar health threatening items, and the brain drain from developing countries. Specific recommended actions are presented, aiming for globalization that is more favorable to the poor.	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Access to Health		Hayden, Cori	A Generic Solution?Pharmaceuticals and the Politics of the Similar in Mexico	University of Berkeley	2006		In 1997 and 1998 the Mexican government encouraged the introduction of generic drugs into Mexico, Latin America's biggest and fastest-growing pharmaceutical market. In contrast to the situation in Brazil, where anti-retrovirals and HIV/AIDS treatment have been the centerpiece of a powerful state-led generics "revolution," in Mexico the move to cheaper, copied medicines has made its strongest mark in the private sector. The rapidly growing pharmaceutical chain Farmacias Similares, whose populist nationalism, affiliated laboratories, political movements, health clinics, and motto have begun to transform the face of health care provision in that country, raises important questions about whether the emergence of a market for generic medicines does in fact signal the reassertion of "the public" in and for Mexican public health. How does the copied pharmaceutical configure a particular set of political practices and discourses launched in the name of the (Mexican) public interest?	
Access to Health		Dasilva, Edgar J. and Murukesan , V. K. and Nandwani, Dilip and Taylor, Mary and Jossekutty, P.C.	The Pacific Islands: a biotechnology resource bank of medicinal plants and traditional intellectual property	World Journal of Microbiology and Biotechnology Volume 20, Number 9 / December, 2004	2004		Traditional medicines, the mainstay of medical treatment for virtually all minor ailments in many developing countries, have been tapped for the production of new therapeutics in the sustenance of human health and well-being. Vulnerable to the vicissitudes of globalization issues such as intellectual property rights, trade and gender are of relevance in the Pacific region that is a source of some unique traditional healing systems.	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Access to Health		Triggle, David J.	The Shape of Medicines to Come: Pharmaceuticals in the 21st Century	Medicinal Chemistry Research Volume 13, Numbers 6-7 / July, 2004	2004		Genomics and proteomics, with advances in combinatorial chemistry and high throughput screening, are yielding enormous amounts of data that are linked and integrated through bioinformatics to provide actual information on new targets, new delivery systems, gene and gene repair therapies, and personalized medicine. However, these promised, but thus far incompletely realized, advances will be challenged by the economics of health care delivery in both the rich and the poor worlds, where poverty and environmental degradation continue to grow in this era of globalization. Demands for medicines to treat existing, reemerging and new diseases will escalate and intellectual property rights and patent protection will be increasingly challenged.	
Access to Health		Cronin, David	Global rules on intellectual property for medicine in Thailand; HEALTH: EU Opposes Cheap Medicines for AIDS in Thailand	IPS (Latin America)	2007		The humanitarian organisation Médecins Sans Frontières (MSF) has protested at Mandelson's calls on Thailand to negotiate with patent holders, rather than issue compulsory licences. MSF refuted Mandelson's claim that violating patents can have negative consequences for innovation of new medicines. According to the organisation, this claim has been disproved by a 2006 report from the World Health Organisation's Commission on Intellectual Property Rights, Innovation and Public Health.	
Access to Health			INTELLECTUAL PROPERTY; Report calls for action to ensure developing country access to medicines, vaccines	Health IP Press			There is now global momentum to address these issues, and we have a unique opportunity to build on this. There is more awareness, more money potentially available, more utilization of scientific capacity in developing countries, and new institutions such as public-private partnerships, ensure that poor people in developing countries have sustainable access to the medicines, vaccines, and diagnostics they need now, and critically, in the future. The report maps out the ways this can be done," said Ruth Dreifuss, the chair of the Commission.	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Access to Health			High-level Commission calls on WHO to act on medicines access for poor nations	Pharma Marketletter	2006		"We are grateful to the Commissioners for undertaking this difficult task. With this report, the Commission has built a solid foundation from which countries can move forward. I encourage all countries to give serious consideration to their role in addressing these critical issues," said Dr Jong-wook, when presented with the report.	
Access to Health		Bounds, Andrew	EU paves way for access to generic medicines	World News	2007		"The main problem of lack of access is not related to intellectual property, so an intellectual-property based solution will not provide the answer," said EFPIA, the drug companies' lobby group. It pointed out that 95 per cent of medicines are not patented. "Where some essential medicines do have patents, voluntary licences have been granted to generic companies in Africa,"	
Health		Njobeni, Siseko	WTO rules do little for drug access'	Health IP Press			Oxfam said 77% of Africans had no access to AIDS treatment, while 30% of the world's population did not have regular access to essential medicines.. Oxfam said, in its free trade agreement negotiations with developing countries, the US insisted on what the organisation said were stricter-than-usual intellectual property rules.	

Table 3 – IP and Development

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Economic Development		Nolan, Julian	The Business of Intellectual Property	BBC News	2006	Y	Considering IP in a business plan can be only the starting point for actively managing this potentially valuable asset	
Economic Development		New, William	Benefits of IP for economic development	Intellectual Property Watch	2005	Y	Georgetown Forum, WIPO: benefits of IP for development, technology diffusion	http://www.ip-watch.org/weblog/index.php?p=48

Table 4 – IP and Globalization

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Globalization		Leopold, George	Hidden IP: booby trap or buried treasure?	Electronic Engineering Times: 1, April 30, 2007	2007		If the process by which technology standards are forged and implemented isn't broken, it is surely straining under the weight of globalization, relentless technological change, patent-infringement and antitrust lawsuits as well as increasingly noisy standards battles among competing industry consortia. . Many are focusing on patent and licensing disclosure. The IEEE, for instance, is awaiting a government opinion on a plan to use voluntary patent disclosure in its standards proceedings. The report concluded that many uses of IP, such as patent pools and cross-licenses, are pro-competitive and good for consumers. But antitrust officials also invoked a legal concept called the "rule of reason" as a primary means for weighing pro- and anti-competitive effects.	
Globalization		Herry-Priyono, B.	Globalization: 'In the long run we're all dead'	Jakarta Post	2003	N	Despite the real need to protect the hard work of innovators, the imposition of intellectual property rights, for instance, is less about a legal issue than about a dictate from the victors of globalization	
Globalization		Stiglitz, Joseph	[I Dissent]Making globalization work properly	The Korea Herald	2006	N	Global intellectual property regime that denies access to affordable life-saving drugs, even as AIDS ravages the developing world	
Globalization		Metcalf, Tim	Spirit of invention sparks ideas with a global impact; The spread of home - grown intellectual property opens the door to prosperity	South China Morning Post	2003	Y	It's heartening to see companies now developing their own intellectual property that can have a major impact around the world	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Globalization		Keating, Giles	Global Winners And Losers - A Booming Population And Widespread Immigration Is Fuelling Worldwide Growth	The Banker	2006	Y	But compared with previous phases of development, proportionately larger opportunities are likely to come from the application of intellectual property. One reason is that there is far more of it around than in the past - not just technologies, but also brands, music and movies	
Globalization		Stiglitz, Joseph	Managing globalisation is not the sole jurisdiction of the US	The Nation (Thailand)	2004	N	Trips and US provisions restricted countries from making generic imitations of drugs, making many critically important medicines unaffordable in developing countries. The global consensus, reflected in the Commission report, calls for more exceptions, so that, say, drugs can be made available in any case where to do so could save a life. To those confronting the prospect of death, what matters is access to life-saving drugs, not whether what is killing the person is part of an epidemic.	
Globalization		Weismann, Robert	Not if, but how: Thurow offers tips on globalization	The Boston Globe	2003	Y	Thurow: One key task for US policy makers will be protecting intellectual property, enabling US companies to capitalize on their innovation	
Globalization		Gilbert, Travis	The challenge of poverty	The Advertiser	2005	N	Meanwhile, trade-related intellectual property agreements continue to prevent developing nations from manufacturing generic life-saving medicines to protect drug company profits. Making poverty history will be an enormous challenge for the international community.	
Globalization		Shiva, Vandana	Neo-liberal globalization a threat to women'	The Hindu	2003	N	intellectual property rights regime was branding women as criminals. Ordinary rights such as digging a well, retaining seed and growing food were being taken away from women. Food, water and other natural resources were being disinvested" from women	
Globalization		Bhagwati, Jagdish	In defense of globalization	Oxford University Press		N	Jagdish Bhagwati ranks as the intellectual superstar of the free-trade movement - an economist who saw first-hand how protectionism wrecked the economy of his native India	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Globalization		Wolf, Martin	Why globalization works	Yale University Press		N	Wolf and Bhagwati lament the fact that corporations have used the globalization of trade and investment to advance their agendas in some areas such as intellectual-property rights. This has deprived developing nations of know-how and badly needed medicines for diseases like AIDS.	
Globalization		Williams, Frances	Developing countries set for clash with US over patents DRUG DEVELOPMENT	Financial Times , London, England	2006		India, Brazil, Tanzania, Thailand, Peru and Pakistan last week proposed an amendment to the WTO's intellectual property agreement that would make such disclosure of origin of invention a condition of receiving the patent	
Academia, Department of Anthropology, University of Notre Dame, Notre Dame, Indiana		Cunningham, Hilary	DNA and the Human Genome Diversity Project Colonial Encounters in Postcolonial Contexts: Patenting Indigenous	Critique of Anthropology	1998	N	IP and biotechnology patents have profound implications for the movement and control of both cultural and material knowledge -> problematized anthropological research	http://coa.sagepub.com/cgi/content/abstract/18/2/205
Globalization		Chaturvedi, Sachin	India, the European Union and Geographical Indications: Convergence of Interests and Challenges Ahead	South Asia Economic Journal 2003; 4; 99	2003		The GIs have emerged as one of the important features of the IPR regime across the world. It is interesting to note that the awareness among the countries has also increased manifold - apart from getting GIs protected, developing countries would also have to take care of maintaining and ensuring quality of their GI-protected products. The recent EU proposal of enhancing the coverage of Article 23 to products other than wines and spirits reflects the concerns emanating from developing countries. India, Sri Lanka, Pakistan and others have been demanding for such enhancement	Sage http://sae.sagepub.com/cgi/content/abstract/4/1/99

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Globalization		Picciotto, Robert	Protests by development activists against injustice of trading system are fully justified	Financial Times (London, England)	2003		For example, the heavy costs and negligible benefits of Organisation for Economic Co-operation and Development agricultural policies, the disastrous environmental impact of fisheries subsidies and the regressive social consequences of tariff peaks for textiles, leather and processed foods have been fully documented. The evidence that these policies hurt developed countries as well as developing countries is overwhelming.	
Globalization			The new face of globalisation; Tensions with China	The Economist	2005		The most important is intellectual property. China is notorious for tolerating rampant intellectual-property theft. Although President Hu Jintao assured Mr Bush in September that he was taking a personal interest in cracking down on counterfeiting, it is clear that China could do more. After all, Beijing has proved remarkably effective at preventing any rip-offs of the official logo for the 2008 Olympics—a dancing figure who doubles as a Chinese character. As China's own innovators develop ever more patents, there will be greater interest in enforcing them energetically. The problem, again, is whether change will come quickly enough.	

Table 5 – IP and Counterfeiting

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Counterfeiting		Hesp, Blair	Entering the Dragon – Intellectual Property Rights in China	New Zealand Insitute of Chemistrey	2007	Y	Chinese companies themselves are coming under the threat of counterfeiters in their own country destroying their competitive advantage and stifling growthEndorsement of the Chinese market and intellectual property regimes that are in place, pharmaceutical companies are setting up their own manufacturing capability	http://www.nzic.org.nz/CiNZ/articles/Proze_70_4.pdf
Counterfeiting			Mind games	Economist	2007		Patent applications China now ranks third, Chinese consumers seem to be taking a greater interest in non-pirated goods	http://economist.com/business/displaystory.cfm?story_id=10111006
Counterfeiting		Delesandro s, Salvatore	Ethiopia: Counterfeit Drugs Seen As a Growing Problem	Africa News	2006	N	Counterfeit goods threaten security, economic growth and public safety worldwide, U.S. and private industry officials warn: negatively impacts our society through the loss of profits, jobs, revenue and posses risks to the community in both consumer safety through the sale of unsafe products and through the presence of criminal organizations responsible for the sale of distribution of those products"	
Counterfeiting			Industry News - New Tests For Herbal Medicines		2007	Y	Meanwhile, Kenya remains one of the world's largest markets for counterfeit drugs. By 2006, the number of fake drugs is believed to have fallen in Kenya to 16.7% according to a survey of 600 product samples	
Counterfeiting		Gips, Michael A.	Countering Counterfeiting				US Intellectual Property Rights Initiative, a program designed to combat counterfeiting and piracy, particularly in the New York/New Jersey metropolitan area, south Florida, Boston, and the high-tech corridors of California. Indications are that the program is going well. IP has been named a priority of the white-collar crime division. FBI and Customs have opened a new IP intelligence	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
			Software Theft	YouGov on behalf of Spreckley Partners Ltd	2007		Survey in the United Kingdom who worked in an office and already took something from the office and whether they downloaded software/films/games/ebooks/pictures: 73% have not done anything alike, whereas 27% have, mostly in younger age groups	
IP Awareness				IP Awareness			Industry world-wide loses large amounts to counterfeiters and piracy. These losses not only affect the producers of genuine items, but they also involve social costs. Ultimately, it is the consumer who pays the cost of unfair competition. Although many consumers believe they are getting a bargain when they buy counterfeits, the actual value of the product is normally much lower. Hence, they end up paying an excessive price for an inferior product. The cost to countries which do not take action against counterfeiting can also be high. If many products from such countries, including genuine ones, gain a reputation of being of poor quality, this will cause export losses which in turn implies both job losses and loss of foreign exchange.	http://www.ipaware.net/
Counterfeiting	Academic	Dutfield, Graham	Mind games	Journal of World Intellectual Property, Vol. 7, No. 5, Queen Mary Intellectual Property Research Institute at the University of London	2004		TRIPS agreement essentially seeks to stamp out music and movie piracy, counterfeiting of branded goods, and unwelcome competition from producers of knockoff drugs. Vandana Shiva, avocal critic of TRIPS considers the agreement more a tool for plunder than protection. In her view, TRIPS blocks the transfer of much needed technologies to the developing world, preventing these nations from lifting themselves up by imitating first and innovating later. Despite what critics such as Shiva argue, the TRIPS text is anything but ironclad. Because TRIPS is not going away, the winning strategy for poor countries is to use the agreement to their advantage.	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Counterfeiting		Harrowitz, Sherry L.	Antipiracy Efforts Face Uphill Battle.				Companies battling piracy spend many millions each year battling the problem, and still they continue to lose tens of billions in forgone profits - but progress has been made in curtailing copyright infringement, says Eric Smith of IIPA. Factories making pirated optical media (CDs, DVDs, CD-ROMs) are moving from traditional locations such as Malaysia and Hong Kong to Pakistan, India, and Thailand, where enforcement remains lax. The IIPA, which just issued its annual report on copyright piracy, cites the involvement of organized crime as another facet of piracy. To fight piracy, the IIPA is urging countries to bolster their copyright laws with a strong regulatory regime that would require licensing for factories that want to produce copyrighted product.	Questia
Counterfeiting		Ramos, Fidel V.	Intellectual Property.				At the beginning of its tenure, the 14th Congress - which now counts on a larger proportion of young leaders - the road to meaningful, innovative reform is wide open. the 14th Congress - in synergy with Malacanang - could lead in setting the example of unity, solidarity, and teamwork in Government that would empower our people to outdo our neighbors in the real world of regional economic competition.	
Counterfeiting		Chui, Angie	Intellectual Property Rights Week Observed at BoC.				Morales, in his message, called for increased social awareness of the bad effects of piracy on the economy even as he said that the only way to totally eradicate the smuggling of fake goods in the Philippines is to urge the public to stop patronizing counterfeit brands. Celso Templo deplored the proliferation of pirated products in the country, saying that "piracy is a crime that should not be tolerated as fake goods in local markets are the products of indifference with serious negative implications on the country's international relations.	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Counterfeiting		Moberly, Michael	The World Is Flat: A Brief History of the Twenty-First Century.				Business is no longer shaped or driven solely by the flow of physical goods and services, but rather by the flow of proprietary information, intellectual property, and other intangible assets. Most of the value of a company, Friedman points out, now resides in brands, copyrights, patents, trademarks, good will, competitive advantages, and other such assets. ut Friedman is light on concrete recommendations for protecting intellectual property. The challenges confronting businesses today include developing better metrics for measuring actual risks to intangible assets, developing more "proprietary" business cultures (to emphasize awareness, alertness, and accountability), relying less on traditional intellectual property law, and integrating protection at the earliest stages of ideas and innovation	Questia
Counterfeiting		Cottman, Lawrence	It's Not the Real Thing.				Industry organizations are continuing to press for firmer action against counterfeiters and pirates. Ironically, it may not be laws but rather the rapid pace of technological change that, while allowing counterfeiters to continue their illicit efforts, will provide industry and security professionals with the capability to stay one step ahead.	Questia
Counterfeiting		Maier, Timothy W.	Counterfeit Goods Pose Real Threat; Counterfeit goods result in loss of jobs as well as revenue. But of even greater concern is the way this global black market is funding terrorist and criminal organizations.				"We need to keep in mind that counterfeiters are business people," says IACC President Tim Trainer, whose organization is an association of more than 150 companies fighting product counterfeiting. The global counterfeit market accounts for 9 percent of world trade and likely will double in the next two years, according to Carratu. "Every major terrorist group in the world is into counterfeiting one way or another. It is a fairly straightforward way to raise funds	Questia

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Counterfeiting		Moberly, Michael	Hot Property: The Stealing of Ideas in an Age of Globalization.	Hot Property: The Stealing of Ideas in an Age of Globalization. By Pat Choate; published by Alfred A. Knopf, www.randomhouse.com/knopf/ (Web); 368 pages; \$26.95.			Choate describes how the emerging United States was "by national policy and legislative act, the world's premier sanctuary for industrial pirates. As the book notes, most people do not recognize the scope of the problem or its consequences. To a lesser extent, they are complicit in the problem. Many factors contribute to product piracy and counterfeiting, including the increase in both tools and opportunities and the relative anonymity of the act. The author fears, though, that the United States lacks the will to confront these issues, which will continue to get worse.	Questia
Counterfeiting		Vermillion, Tony	Counterfeiting Exposed: Protecting Your Brand and Customers.	Counterfeiting Exposed: Protecting Your Brand and Customers. By David M. Hopkins, Lewis T. Kontnik, and Mark T. Turnage; published by John Wiley & Sons, www.wiley.com (Web); 293 pages; \$34.95.			Imitation is supposed to be the highest form of flattery. Don't believe it for a second, say the authors of Counterfeiting Exposed, especially if you happen to be a for-profit business executive, security manager, law enforcement agent, or consumer. Counterfeiting deprives legitimate businesses of an estimated half billion dollars per year, and the toll is rising.	Questia
Counterfeiting	Business	Stimson, David C.	Counterfeiting in cyberspace.	International Trademark Association and Trademark Counsel for Eastman Kodak Company		Y	Need for a systematic network of effective national and international legislation that will weaken the ability of infringers and counterfeiters to penetrate the global marketplace with their goods. Whether trademark infringement occurs on the Internet or in the manufacturing sector it affects the economic bottom-line of business and the health of the global economy.	Questia

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Counterfeiting		Ratanayu, Areeya and Gautier, Clemence	Political uncertainty affects IP owners	Managing Intellectual Property; Oct2007 IP Focus Asia-Pacific, p77-79, 3p			After many years of negotiation, the government introduced the ComputerRelated Crime Act in July 2007 to counter cyber crime. The adoption of this law touches on many controversies both in Thailand and internationally. If the government maintains such Incoherent and disjointed IP policies, Thailand may experience a decrease in investment from foreign companies	http://search.ebscohost.com/login.aspx?direct=true&db=buh&AN=27530250&site=bsi-live
Counterfeiting		De Castro, Julio and Balkin, David and Shepherd, Dean	Can entrepreneurial firms benefit from product piracy	Journal of Business Venturing; Jan2008, Vol. 23 Issue 1, p75-90, 16p	2008		Potential benefits of product piracy to entrepreneurial firms, resource-based perspective to show that a decrease in the inimitability of an entrepreneurial firm's intellectual property does not necessarily diminish performance when piracy increases the value of this resource, and an information economics perspective to explain why and when imitation can increase the value of an intellectual property resource. Fighting piracy may be perceived as a social goal that warrants the expenditure of government resources. Piracy is seen as the lesser of two evils, and the burden of fighting piracy is shifted to entrepreneurial firms, potentially raising the costs of piracy to firms in this context.	
Counterfeiting			Risk and Enforcement Challenges	GAO Reports; 10/18/2007, preceding p1-16, 16p	2007		increasing risks of intellectual property (IP) theft and infringements in the U.S. and the effectiveness of the federal IP protection strategies. It discusses the nature of risks that corporations face in safeguarding IP and the methods for implementing and coordinating domestic IP enforcement activities	
Counterfeiting		Zeller, Christian	From the gene to the globe: Extracting rents based on intellectual property monopolies.	Review of International Political Economy; Feb2008, Vol. 15 Issue 1, p86-115, 30p, 1 diagram	2008		In the context of an increasing socialization of labor, in particular of innovative activities, the private appropriation of knowledge in the form of intellectual property monopolies and its commercial valorization has become a central characteristic of the current configuration of capitalism. Findings from the pharmaceutical and biotechnology industries illustrate how, based on specific power relations, the owners of property titles can appropriate resources and values.	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Counterfeiting		Cordeiro, Anjali	Consumer companies face global rise in counterfeit goods	Dow Jones Newswires	2007		As global trade booms and free-trade zones grow, international crime syndicates are finding it easier to ship a wider variety of spurious products across borders. Counterfeiting has traditionally been a problem that companies faced in Asian markets, and counterfeiters tended to set their sights on luxury products like designer handbags. But fake versions of everyday consumable products ranging from toothpaste to cigarettes have now begun to make their way to developed and other markets around the world	LexisNexis
Counterfeiting			Microsoft Announces a New Initiative to Combat Counterfeit Software and Piracy; Genuine Software Initiative Responds to Increased Risks Posed by Counterfeit Software	PR Newswire US	2006		As part of its commitment to help protect consumers and resellers from counterfeit software and other forms of software piracy, Microsoft Corp. (NASDAQ:MSFT) today announced its new Genuine Software Initiative. The Genuine Software Initiative (GSI) will focus the company's many activities and investments directed at combating software counterfeiting and other forms of software piracy into a single coordinated effort. The initiative will focus increasing investments across three strategic areas: education, engineering and enforcement.	LexisNexis
Counterfeiting			Counterfeiting and Theft of Tangible Intellectual Property	Federal Document Clearing House Congressional Testimony	2004		Timothy Trainer, President of the International AntiCounterfeiting Coalition (IACC): Today, the global proliferation of product counterfeiting and piracy threatens consumers, governments and companies. Product counterfeiting and piracy is a revenue generating tool of organized crime and threatens national economic security. In addition to the growing organized crime element, counterfeiters act with reckless disregard for consumers. This generation of product counterfeiters does not recognize national borders and counterfeits all types of products.	LexisNexis

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Counterfeiting			Canada not keeping pace with worldwide decline in software piracy; Canada's Software Piracy Rate Increases to 36%, Costing the Economy Over \$1 Billion	Canada NewsWire Financial News	2005		Piracy is still most prevalent in countries and regions where the software market is growing as personal computing becomes more integral to work and daily life. In Canada, the fastest growing sector in the PC market was consumer and small business. Education programs, policy initiatives and enforcement efforts around the world continue to have an impact on the piracy problem," said Robert Holleyman, president and CEO of BSA. "But the continued influx of new users in emerging markets, and the increased availability of pirated software primarily through the Internet and P2P networks, underscores that continued education is a must.	LexisNexis
Counterfeiting			Marginal decline in Indian software piracy: IDC	Indo-Asian News Service	2006		Stronger intellectual property protection and education and awareness are critical to stem the growth of piracy globally. As broadband growth continues and the IT sector expands, the influx of new users and the increased availability of pirated software requires sustained efforts to reduce software piracy," Holleyman said	LexisNexis
Counterfeiting		Litvack, Mark	Dealing With Piracy		2006		Developers often spend significant dollars and countless hours of ingenuity and sweat equity bringing a game to market. Embarking on an anti-piracy program to protect that ingenuity may be an important weapon when seeking to protect intellectual property, but such a program may also be ill-advised. Each developer will have to strike the balance between anti-piracy protection and customer service that it is comfortable with. However, one should never underestimate the importance of giving customers what they want. Over-emphasizing anti-piracy and creating a hassle for one's legitimate customers to use a product is almost certainly a mistake. Ideally, one's anti-piracy efforts should be invisible to the legitimate consumer	LexisNexis

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Counterfeiting			Canada lagging U.S. in fight against software piracy; Study finds 35 per cent of software is pirated in Canada	Canada NewsWire	2004		Canada represents a perfect example of the problems presented by software piracy," said Alex Manfrediz, IDC Program Director, Global Projects. "Despite the presence of a healthy technology sector and strong copyright protection laws, Canada still managed to achieve a 35% piracy rate resulting in more than CDN \$900 million in lost revenues. Among the victims of software piracy are small Canadian software developers who need a strong local revenue base to survive."	LexisNexis
Counterfeiting		Lever, Rob	China, Russia hit on piracy by music industry, Hollywood	Agence France Presse -- English	2004		Valenti cited China and Russia, "where the problems are large and growing at an alarming rate" and where "organized criminal groups play a large role in the replication and distribution of pirated DVDs." Although intellectual property piracy occurs in numerous countries, the records of four nations are particularly troubling. Piracy is rampant in China, Russia, Brazil and Pakistan," Lugar said.	LexisNexis
Counterfeiting			CBP supports European Union-U.S. Action Strategy for Enforcement of Intellectual Property Rights	States News Service	2006		CBP will continue to work with the European Union, other U.S. government agencies and industry to reduce the number of counterfeit goods that are sold illegally every year in order to protect American industry from unfair trade practices and foster a fair international trading environment	LexisNexis
Counterfeiting			Customs and Border Protection supports European Union - U.S. Action Strategy for enforcement of Intellectual Property Rights	US Fed News	2006		The U.S. and EU have agreed to step up actions to encourage third countries to enforce IPR laws and to combat counterfeiting and piracy, drawing upon information from industry to coordinate messages on key enforcement issues to complement each others' bilateral efforts working with third countries	LexisNexis

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Counterfeiting			Intellectual Property Rights	CQ Congressional Testimony	2007		Statement of Chris Moore Deputy Assistant Secretary, Trade Policy and Programs U.S. Department of State. A strong intellectual property rights regime - one where copyrights, trademarks, patents, and other forms of intellectual property are protected by law, effectively managed and vigorously enforced - has proven essential to driving economic progress in the United States and to making our nation one of the most innovative and competitive on earth. Intellectual property rights provide vital incentives to invest in breakthroughs in science, engineering, and the arts. They ensure knowledge-based firms and their workers are rewarded for their unique creativity and achievements.	LexisNexis
Counterfeiting			U.S. names Intellectual Property Enforcement Chief in Asia	States News Service	2006		"Protecting intellectual property rights in the United States and throughout the world is one of the highest priorities of the Department of Justice," said Attorney General Gonzales. "My appointment of an Intellectual Property Law Enforcement Coordinator for Asia is an important step in coordinating enforcement efforts in a critical region of the world."	LexisNexis
Piracy		Plquero, Nicole Leeper and Plquero, Alex R.	Piracy Democracy and Intellectual Property: Examining Trajectories of Software	The ANNALS of the American Academy of Political and Social Science 2006; 605; 104	2006		democracy and software piracy interrelate in interesting ways. Democratic countries as well as the democratic principles of strong civil and political liberties seem to offer a buffer against software piracy, while non-democratic countries appear to exacerbate piracy by having restricted market access to certain products. This restricted access to legitimate products, which might be seen as politically innocuous in other contexts, provides opportunities for exploitation of copyrighted materials to fill the void	Sage
Counterfeiting			PriceWaterhouseCoopers Survey	PWC	2007		Demand for counterfeit luxury goods in the UK may be set to rise as consumers face a spending squeeze but retain their appetite for luxury brands.	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Counterfeiting		Tscheber, Petra and Boigner, Andreas	Determinants of the purchase intention regarding counterfeit luxury products and software – an empirical study applying the theory of reasoned action				The predominant effect of attitudes and subjective norm on the purchase intention of counterfeit products belonging to both the fashion-related and software/CDs category should be exploited for specially adapted marketing strategies. On the other hand, marketers should emphasize the psychological advantages of their products by creating a message that leaves no doubt that no amount of imitation could produce the same prestigious image and exclusivity as “the real thing” and “being real”. Of course, there is always the alternative of seeking redress through more stringent legislative control, punishment of intellectual property rights violations, and more vigorous enforcement measures, as well as through sophisticated technologies like hidden magnetic or microchip tags, holographic images, special inks and dyes, and digitized fingerprints of labels	
Piracy		Orlando, Laura	Piracy provisions under the Enforcement Directive and patent infringement	Journal of Intellectual Property Law & Practice, 2007, Vol. 2, No. 10	2007		This case sets standards for the actual application of the measures provided for by the Enforcement Directive and confirms that the Italian judiciary acknowledges that there is a strengthening of the rights holders’ position against product piracy through the granting of more effective powers.	
Piracy		Mgbeoji, Ikechi	Global Biopiracy: Patents, Plants, and Indigenous Knowledge	Cornell University Press, Ithaca, NY, 2006.	2006		Mgbeoji defines ‘biopiracy’ as the commercial use of plants and traditional knowledge of the use of plants (TKUP) without (i) compensation, (ii) acknowledgment of prior intellectual input to the plants’ improvement or the creation of TKUP or (iii) the informed consent of the owner(s) of the plants or practitioners of TKUP. Mgbeoji stresses the need to rethink global attitudes and regimes on plant patentability, while recognising the challenges of doing so in light of the enormous national and corporate interests vested in the current framework. developing countries should first, through a regional approach, take the lead in creating new norms; and second, utilise domestic law to adopt defensive positions, refusing others access to their genetic resources	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Piracy			Global Consumer Awareness, Attitudes, and Opinions on Counterfeiting and Piracy	The Gallup Organization	2007		While there are some patterns that exist globally in counterfeiting and piracy, every market is different and requires a tailored communication strategy - Consumers do not believe their governments are committed to find and prosecute counterfeiting In markets studied, one quarter of consumers are purchasing counterfeit items. Vast differences by geography. The big three of Branded Apparel, Bags, and Footwear; Music; and Movies is highly correlated to GDP. Health and Safety threats abound in the developing world. The greatest deterrent in the U.S. is links to terrorism, organized crime and health and safety	

Table 6 – IP and Copyrights

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Copyright		Gower, Andrew	Intellectual Property Battle Rages On	BBC News	2006	N	Should be made legal to copy CDs to music players or computers, that a European patent is worth pursuing and that the term of copyright in performances should remain unchanged	http://news.bbc.co.uk/2/hi/technology/6162139.stm
Copyright		Vaidhyanathan, Siva	Celestial Jukebox: The Paradox of Intellectual Property	American Scholar Spring 2005	2005	N	Everyone is frustrated with some aspect of copyright today	http://www.questia.com/PM.qst?a=o&d=5009317620
Copyright		Baum, Allen	IP experts call for new patent pathway	EETimes	2007	N	Given the incredible patent thicket in some areas such as MP3 players, if you want freedom of operation, how can stacking not be an issue	http://www.eetimes.com/news/latest/showArticle.jhtml?articleID=202404780
Copyright		Shaw, David	Copyright and copywrong		2007	Y	I suspect that, just as the attraction of easy money has led to a proliferation of illegal DVD copy artists, the ease of making copied tread patterns is more likely to increase than decline	
Copyright		Naím, Moisés	Smugglers, Traffickers and Copycats are Hijacking the Global Economy	The Daily Telegraph (LONDON)	2006	Y	Naim overstates but emphasises the case when it comes to theft of intellectual property by using industry's figures for what they claim to have lost, rather than what the criminals have earned	
Copyright		Chartrand, Sabra	To some, globalization, not corporate lobbying, is the real reason copyrights are growing in power.	The New York Times	2002	Y	Jack Valenti does not advocate perpetual copyrights, but many advocates agree with him when he declares: "A limited period of time is whatever Congress says it is."	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Copyright	Academia	Samuelson, Pamela	Does Copyright Law Need to Be Reformed?	University of California, Berkeley	2007	-	Courts should have power to stop infringements and to order infringers to pay damages for the harm. Return to framework for copyright in which the exclusive right are narrowly tailored and construed, in which acts not falling within them were free from copyright constraints	Communications of the ACM
Copyright		Jamar, Steven D.	Copyright and the Public Interest from the Perspective of Brown v. Board of Education	Howard Law Journal	2005		As the Court did with respect to education and racial discrimination in Brown, so should we do in intellectual property law. We ought not examine intellectual property only from a property perspective or only from the perspective of the creator or funder or exploiter of the rights or only from the perspective of conservative stare decisis. Instead we should examine intellectual property issues from the perspective of social good and the public interest and the interests of all groups involved. We need intellectual property law to be a transformative force for social and economic justice like the statutory actions of Congress in the Civil Rights Act of 1964 and the actions of the Supreme Court in Brown forty and fifty years ago.	LexisNexis
Copyright		Nevin, Douglas M.	No business like show business	Emory Law Journal	2004		Rather than pitting artists against one another, the industry must find a way of celebrating the theatre's communal sensibility. To ensure that artists remain in the theatre, or at least continually return to the theatre, the industry must restore its own collaborative magic. To preserve the collaborative nature of the production process, existing copyright framework must be used in a different manner	LexisNexis

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Copyright			KTV Clubs asked to pay copyright usage fees	Chinadaily.com.cn	2006		KTV clubs in China will pay at most 1 per cent of their total income in the near future to copyright owners of the music videos they use, a senior official with the National Copyright Administration said yesterday. Wang expressed his hopes that responsible government departments such as the price supervision authorities will pay close attention to the prices of KTV clubs after the copyright fees are adopted. If the KTV clubs refused to pay, the music and music video copyright owners, as well as two associations representing them, will sue the clubs, Wang said. Early this year, the Music Copyright Society of China filed suit against a KTV club in South China's Shenzhen after the club used 20 musical works to earn money but refused to pay copyright fees.	

Table 7 – IP as Trademark

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Trademark	Business	Khin, Nande	Protecting your ideas;Intellectual property is crucial to an SME's competitive advantage	The Business Times Singapore	2005	Y	If a company does not have the in-house capabilities for IP management - whether for protection or exploitation - it should approach a professional service provider for help. Mr Wong advises companies not to economise on this: 'If you want good advice to help your company protect its IP assets and build its market share, it wouldn't come cheap. Since IPOS started targeting Singapore companies about three years ago, Mr Wong says that more SMEs are aware of what IP really is, even if not many are yet actively exploiting it.	LexisNexis
Trademark	Business	Earn, Keoy Soo	Uncover the treasure in IP; Intellectual property is not the domain of large high-tech organisations. Smaller businesses can benefit from IP too	The Business Times Singapore	2005	Y	INTELLECTUAL property (IP) is a hidden treasure that can be found in every successful business, large or small. The first step to being able to harness the value of your IP lies in successfully identifying them	LexisNexis
Trademark	Business	Chung-yan, Chow	Trademark row over Silk Alley	South China Morning Post	2005		Beijing's Silk Alley - formerly a notorious outlet for fake designer goods - is at the centre of a different trademark dispute with the developer of the shopping plaza which replaced it being sued for unauthorised use of its name.	
Trademark	Business	Chellam, Raju	Many SMEs keen on Linux	The Business Times Singapore	2005		He cited the case of SCO Inc suing IBM for infringing SCO's Unix-Linux operating system trademarks as an example. As for government departments opting for open source, Mr Ballmer said that 'it is for national security purposes that most governments want to see the software's programming code to assure themselves that there is no secret instruction to steal state secrets'	LexisNexis
Trademark	Business	Chellam, Raju	Good IP laws will benefit all	The Business Times Singapore	2004	Y	PROPER intellectual property protection will benefit local companies and encourage multinationals to set up research and development facilities in Singapore. The changes to the Patents Act include the extension of patent terms to compensate for delays in obtaining a patent grant or	LexisNexis

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
							marketing approval. This will be valuable to companies that enjoy good returns on their patented inventions, Ms Jacob said	
Trademark		Sserunkuu ma. Shaban	All consumers could be copyright thieves	The Monitor (Uganda) - AAGM	2007		Customers are not always king, or queens, after all. During a public discourse on intellectual property (IP) rights abuse, organised by local NGOs Consumer Education Trust and DENIVA, virtually all speakers condemned consumers for their immorality. Mr. Olinga George, Director, Bahai External Affairs consumers will make it their duty to protect rather than abuse IP rights through spending their money on or accepting authentic, licensed and authorised goods and services. Without directly involving consumers in the battle to stamp-out IPR abuses, through the law, government may have won the battle but is bound to lose the war.	LexisNexis

Table 8 – IP as Patents

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Equally used as Patents		Biggs, Stuart	Patents a deadly weapon in export war; Mainland companies must build intellectual property to guard against lawsuits	South China Morning Post	2006	Y	Mainland companies needed to realize that building their own intellectual property was not only a strategy to enhance bottom line revenue but a safeguard against this kind of lawsuit	
Equally used as Patents		Govender	South Africa: More Than a Million Women Died of Aids Last Year	Africa News	2003	N	Affordable, accessible generic treatment is rejected in the name of protecting patents, intellectual property rights and profits. South Africa won a critical part of this debate during the pharmaceutical companies' challenge to the Medicines Act	
National Association for Science, Technology & Society		Ekberg, Merryn	Seven Risks Emerging From Life Patents and Corporate Science	Bulletin of Science Technology Society	2005	-	Successful patent offers social recognition for intellectual achievement, shift from public to private science and IP -> risk to human dignity, risk of conflict public/private ownership, risk international conflict Third World with First World. BUT: Alternative to patents is secrecy, antithesis to cooperation and transparency. Thus patents would rather increase access	http://bst.sagepub.com/cgi/content/abstract/25/6/475

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Patents		Eisenberg, Rebecca	Patenting genome research tools and the law	University of Michigan Law School	2003		Patenting genes encoding therapeutic proteins was relatively uncontroversial in the early days of biotechnology. Controversy arose in the era of high-throughput DNA sequencing, when gene patents started to look less like patents on drugs and more like patents on scientific information. For the first generation of recombinant DNA products, patents on genes looked more or less like patents on drugs. Today, patents on genes look more like patents on scientific information. In contrast to patenting end products, patenting the information base for future R&D raises serious questions as to whether, on balance, it is more likely to promote progress or to retard it. As new business models evolve for translating DNA sequence information into profitable products, it is not yet clear what role the patent system will play.	ScienceDirect
Patents		Sapsalis, Elefthérios and van Pottelsberghe de la Potterie, Bruno and Navon, Ran	Academic versus industry patenting: An in-depth analysis of what determines patent value	Université Libre de Bruxelles, Solvay Business School, Centre Emile Bernheim, ULB	2006		Evidence that the value distribution of academic patents is very close to that for corporate patents. Backward patent citations, non-patent citations, the number of inventors and the number of co-assignees all affect, at least to some extent, the value of both academic and corporate patents. Of particular importance is the fact that self-citations to the scientific literature lead to patents with higher value. In other words, the researchers who rely on their own scientific publications produce inventions with higher economic potentials. This result suggests that policy-makers should aim at stimulating star scientists to codify their tacit knowledge into patents.	ScienceDirect

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Patents		Nadelmann	Patents/Drugs	Foreign Policy			Nadelmann's article reflects the intense polarization of the current U.S. drug policy debate. One side advocates "prohibition only," which relies on law enforcement, incarceration, and eradication of drug crops in foreign countries. The other side favors legalization of drugs that are currently outlawed, such as heroin, cocaine, methamphetamine, and marijuana. Nadelmann, who supports legalization, ignores a range of effective approaches that lie between these two policy extremes. Nadelman's Reply: Mathea Falco is mistaken when she argues that the current drug policy debate in the United States is intensely polarized. In fact, it barely exists.	
Patents		Kahn, Jonathan	What's the Use? Law and Authority in Patenting Human Genetic Material	Board of Trustees of the Leland Stanford Junior University Stanford Law & Policy Review	2003		PTO's comments assert that genes are no different from any other chemical and that patents do not commodify, as they merely confer a right of exclusive use for a limited time - debates reveal deeper and pervasive societal concerns and contests over who gets access to the law in order to promote their claims to manage and interpret genetic material. The preceding discussion explores how diverse actors have articulated and deployed competing models of authority to frame, expand, or restrict the reach of patent law in the realm of human genetics. Instead, the PTO embraced and affirmed a construction of the human being as, at one end of the spectrum a passive repository of genetic raw material, and, at the other end, a reactive object or consumer of genetic products defined primarily in terms of individual pathology	LexisNexis
Patents		Cottier, Thomas	The Protection of Genetic Resources and traditional knowledge: Toward more specific rights and obligations in World Trade Law	Journal of International Economic Law - Oxford University Press	1998		As much as industrial progress, specialization and mass extinction of natural resources were not primarily because of the evolution of modern IPRs, the evolution of TRPs will not be able to halt the process of erosion and displacement of traditional knowledge. Protecting information is essential, but it is not enough to provide adequate incentives.	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Patents		Sideri, Sandro and Giannotti, Pantaleo	Patent System, Globalization, and Knowledge Economy	Istituto Universitario Orientale, Naples, Italy, and Istituto Studi Politica Internazionale, Milan, Italy			Patents for inventions are at the crossroad of law, technology and economics, with the Patent System resting on two fundamental assumptions: one, that technical progress is desirable and that disclosure is preferable to secrecy; two, that a competitive market economy is in the public interest, but that inventions need to be temporarily sheltered from competition by the grant of exclusive Intellectual Property rights	
Patents		Grosche, Andreas	Software Patents – Boon or Bane for Europe?	International Journal of Law and Information Technology Vol. 14 No. 3 © Oxford University Press 2006; Advance Access Published on 13 April 2006	2006		The U.S. experience with software patents serves as a warning: Despite some differences, there is no reason to believe that Europe will fare any better in the long run if it starts down a similar path of allowing software patents in the first place, no matter how well-meaning the safeguards – they were weak enough from the outset in the draft CIID. Moreover, in summary, as it has evolved, an incompatibility with the patent system is woven into the fabric of information technology. sound self-interest of European lawmakers commands that they do not cave in to such rhetoric, which upon closer scrutiny has proven to be not a call for the protection of existing, enforceable entitlements, but the demand to be granted further intellectual property rights without foundation in either the EPC or TRIPs.	
Patents		Adelman, David E. and DeAngelis, Kathryn L.	Patent Metrics: The Mismeasure of Innovation in the Biotech Patent Debate	Texas Law Review Vol. 85			Rise and Fall of biotechnology patenting and the diffuse and expanding patterns of of patent ownership. Lack of concentrated control and the rising number of patent applications and the continuous influx of new patent owners suggest overall biotechnology innovation is not being impaired by the growth in patents issued each year	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Patents		Evans, Glen A.	The Human Genome Project and public policy	Public Understanding of Science 1999; 8; 161	1999		In addition to publicly funded efforts, two commercial efforts to sequence the human genome and to patent commercially important genes and polymorphisms were announced in 1999. Human Genome Project has clear and profound societal implications for medicine, biotechnology, education, the legal profession, governmental regulation and social norms. But, the sheer magnitude of the Human Genome Project and the vast amount of genetic information to be discovered in a very short time period of human history, underscores the value and importance of the public debate.	http://pus.sagepub.com/cgi/content/abstract/8/3/161

Table 9 - IP and TRIPS

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
TRIPS		Endeshaw, A.	Do Asian Nations Take Intellectual Property Rights Seriously?	University of Edinburgh	2007	N	Foreign concerns of making Asian IP laws into mirror-images of those in the US, Japan and EU and establishing enforcement agencies under the direct control of foreign institutions and government departments will cause incalculable damage to the interests of Western corporations and IP owners Current tendencies of forcing nations into TRIPs plus regimes might have the unfortunate effect of fostering rebellion in the streets and shops of Asia thus robbing the fledgling IP system of any legitimacy it might otherwise have been building up	http://www.law.ed.ac.uk/ahrc/script-ed/vol4-2/endeshaw.asp
TRIPS		Banta, David	Increase in global access to essential drugs sought	JAMA. Chicago: Jan 19, 2000. Vol. 283, Iss. 3; pg. 321, 2 pgs	2000	N	The Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement will have consequences for access to medicines, particularly in developing nations.	
TRIPS		Nugroho, Yanuar	Reinventing globalization	Jakarta Post	2002	 (TRIPs), Trade-Related Investment Measures (TRIMs), etc., the consumerism ideology is propelled by the immense power of advertisement. Thus, it will be easily understood that as the newly made rules are imposing nations to adopt deregulation, liberalization and privatization policies, the advertised global lifestyle, culture and identity is spreading all over the world.	
International Trade		Thompson, Marcelo	Brazilian Ventures and Intellectual Property	Department of Operations with Emergent Companies, FINEP / Ministry of Science	2007	Y	Venture capital market, perception of the importance of intellectual property as a factor of stabilization, mitigation of risk and determination of success for small technology-based companies	http://www.wipo.int/sme/en/documents/pdf/brazilian_ventures.pdf
IP		Tagliabue, John	Thousands in France rally against global trade	The International Herald Tribune	2003		France: Main topics of the three days of debate, which end Sunday, would be essentially the Cancun agenda: farming, services, intellectual property rights in food and medication	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Trade		Su, Evelyn	The winners and the losers: the Agreement on Trade-Related Aspects of Intellectual Property Rights and its effects on developing countries.				MNCs are profoundly disquieted by the Charter of Economic Rights and Duties particularly those provisions dealing with expropriation and compensation - troubled by the provisions for technology transfer, which essentially mean surrendering the heretofore exclusive patents and trade secrets of advanced technology to competitors in the Third World. Popular image of the world is no longer an infinitely expanding organism but rather a claustrophobic spaceship with limited and increasingly overtaxed resources, distributed hereafter to the winners of zero-sum competitions	
TRIPS		Rikowski, Rut	Tripping over TRIPS?	Business Information Review			TRIPS is not part of trade, but instead is primarily designed to help big business, as it engenders and encourages a protectionist environment through IPRs, for the benefit of large corporations. However, many criticisms have been levied against it – particularly that that it favours large corporations and is particularly harmful to the Third World, in areas such as medicine and local indigenous knowledge. and lessening in the control that national governments will have in being able to make and enforce IPR laws in their own countries However, I would argue that one of the most important areas to consider is whether TRIPS is essentially about the trading of IPRs or moral issues in regard to IPRs. A careful reading of the TRIPS document shows very clearly that it is about the former and not the latter. The WTO has far greater representation from big business than from other groups, such as NGOs. This, in itself, should make us very cautious about what the ultimate aims behind TRIPS are.	http://bir.sagepub.com/cgi/content/abstract/20/3/149
Trade		Barwa, Sharmishta and Rai, Shirin M.	Knowledge and/as Power: A Feminist Critique of Trade Related Intellectual Property Rights	Gender Technology and Development 2003; 7; 91	2003	N	he TRIPS regime is reducing, not increasing, the space for women to reap the benefits of their efforts. This is because TRIPS is embedded in the global capitalist regime of individualized property, which is seen as being of value only when traded in the marketplace. TRIPS regime is institutionalizing the concentration of privilege-male and Northern-by operating on a winner-takes-all market concept.	Sage

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
TRIPS			Patients Before Profits: TRIPS and Trade Rules on Intellectual Property	Oxfam			Since 2001, Oxfam has engaged in a campaign to revise the global patent rules of the World Trade Organization so that they favor public health over companies' patent rights. Oxfam has been pressuring drug companies to help poor people access critical medicines—to put patients before profits.	http://www.oxfamamerica.org/whatwedo/issues_we_work_on/trade/news_publications/trips/art4190.html
TRIPS		Adams, Wendy A.	Intellectual Property Infringement in Global Networks: The Implications of Protection Ahead of the Curve	International Journal of Law and Information Technology, Vol 10. No. 1 Oxford University Press	2002		While the open-ended nature of minimum standards of protection could in theory lessen the harmonizing influence of the TRIPS Agreement, conventional wisdom at the time of promulgation would have indicated that Member states with superior technological capacity would have little incentive to implement protection significantly ahead of the curve. Legitimate concerns do exist as to the allocations of benefits and burdens within these institutional structures, but are more properly characterized as calls for reform rather than threats of disengagement, and do not amount to a compelling argument in favour of private enforcement as a viable mechanism for achieving a measure of distributive justice in matters of global economic integration.	
International Trade		Wai, Robert	Countering, Branding, Dealing: Using Economic and Social Rights in and around the International Trade Regime	EJIL Vol. 14 No. 1	2003		Multiplicity of technique will be needed to humanize transnational economic governance - through trade agenda informed by concern of international economic and social rights broadening the narrow trade-facilitative understanding of the policy purposes. Activism around the trade regime by NGOs can impact negotiation	

Table 10 – IP and Litigation

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Litigation		Cockburn, Iain	IP experts call for new patent pathway	EETimes	2007		Economic impact of IP litigation and licensing costs	http://www.eetimes.com/news/latest/showArticle.jhtml?articleID=202404780
Litigation			IPRs in a new world regime	The Hindu	2004	Y	India has also recognized the need to build institutions that would provide expert guidance on issues related to IPRs. All major law universities in the country have introduced academic programmes on intellectual property laws. There is a lot more awareness on IPRs these days. People have become more conscious about protecting their inventions,	
Litigation		Swanson, Kara	Biotech in Court: A Legal Lesson on the Unity of Science	Social Studies of Science 2007; 37; 357	2007		The trial court's decision in Roche v. Promegadid not travel easily beyond the San Francisco courtroom. It was overturned in part on appeal it was contradicted by European patent law decisions and it was never accepted by Roche or the Cetus participants. But Promega presumably does not want its own scientists to author patents unaided as if they were authoring papers. The simple syllogism by which biotech scientists are considered indistinguishable from academic scientists, and therefore, authors of patents who are to be judged by the same rules as authors of scientific papers, was helpful to Promega in this case, and also may be generally helpful in recruiting highly qualified scientists, but it is potentially disastrous in the courtroom the next time Promega is defending one of its own patents.	http://sss.sagepub.com/cgi/content/abstract/37/3/357

Table 11 – IP and FDI

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
FDI/Technology Transfer (Gl.)			Project on IPRs and Sustainable Development	UNCTAD-ICTSD		Y	Stronger IP inducement to FDI and tech. Transfer as a result	http://www.ictsd.org/pubs/icts_series/iprs/PP/PP_3CH_05.pdf
FDI/Technology Transfer (Gl.)		Clarke, Peter and Yang, Deli	Globalisation and intellectual property in China	SCIRUS	2007	Y	practical aspects of IP	
FDI/Technology Transfer (Gl.)		Kashi Nath Jena	Intellectual Property Rights, Globalisation and Global Relations : A Reflection through Indian Paradigm	Delhi, Abhijeet, 2005	2005		few works have been done to address the potential bearing of IPRs on global, politics, economics, culture, industrial development, efforts and ideas of technocrats, legal experts, social scientists, economists, politicians, policymakers non-state actors, environmental activists and administrators, the issue is unlikely to be matured from its present fluid status.	https://www.vedamsbooks.com/no39005.htm
FDI/Technology Transfer (Gl.)		Morris, Julian et altr.	Globalisation and the Intellectual Property Debate	Centre for a New Europe	2002	Y	product regulations can't be realistically withdrawn for it would cause dramatic reduction in inventiveness, in technology sector not justified - softwares rapidly being hacked	http://www.cne.org/pub_pdf/ideal_matter.pdf

Table 12 – IP and Innovation

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Innovation			Cosa è La Proprietà Intellettuale?	Federale Della Proprietà Intellettuale	2007	Y	IP to be enforced for potential abuses, as works of art as fruit of the care and commitment of the developer	http://www.ip4all.ch/l/einstieg/e1.shtm
Innovation			Internet E Diritti, Consulto a Roma	La Repubblica	2007	Y	Minister of Communication: Creative industry must protect with new ways intellectual freedom	http://www.repubblica.it/2007/09/sezioni/scienza_e_tecnologia/diritti-web/diritti-web/diritti-web.html
Innovation		Dunaway, David	The Case for Stronger Software and Intellectual Property Protection	Business Perspectives Spring 1992	1992	Y	The price of hardware continues to fall, but price for human capital to rise, inhibitor to growth in the software industry is piracy	http://www.questia.com/PM.qst?a=o&d=5000159690
Innovation		Brian Martin	Against intellectual property	University of Wollongong, NSW 2522, Australia. Department of Science and Technology Studies	2007	N	Intellectual property is only one technique of many by which powerful groups control information in order to protect and expand their positions and wealth. Intellectual property can only serve to aggravate the inequality on which it is built. In a society without intellectual property, creativity is likely to thrive	http://www.eff.org/IP/against_ip.article
Innovation		Lessig, Lawrence	Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity			N	Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Innovation		Lohr, Steve	To IBM, sharing looks better than hoarding	The New York Times	2005	N	"Democratizing Innovation." "It becomes more economically efficient to be open." companies have to make their own intellectual property usually specialized software for handling information available either for small licensing fees or free, as IBM pledged.	
Innovation		Donofrio, Nicholas M.	Creating new innovation frontier	New Straits Times (Malaysia)	2006	Y	The NII Report was released during a Dec 15, 2004, summit in Washington, DC. Among its key recommendations were the development of new incentives and support for business creation, a new intellectual property regime, and a national investment plan tailored to support America's most promising areas for innovation and ensure its research competitiveness in the future. It would be impossible for pioneers in technology, or any other discipline, who have charted new territory to justify the return on investment for their journeys	
Innovation - China			With Globalization and knowledge explosion, intellectual property rights have become a key to success	Focus on IPR in Suzhou Park		Y	'Protection of intellectual property rights promotes innovation. The Suzhou Industrial Park, which has grown rapidly, has come to realize the close connection between preserving intellectual property rights and attracting external capital, encouraging innovation and accelerating economic and social development	
IP		Mingorance, Francisco	The foolishness of stifling creativity	New York Times		Y	In Europe, some want to reward intellectual property while others are striving to penalize it - links between intellectual property and economic prosperity. Europe and countries such as France in particular ought to respect those links, in case neglect of intellectual property lead to economic, technological and cultural stagnation	
Tech. Change		Kanwar, Sunil and Evenson, Robert	Does IP protection spurt technological change?	Oxford Economic Papers 55	2003		Protection of IPR encourages R&D investment. Implementation aspect not enough quantifiable evidence for many developing countries, despite IPRs in place, do not decree over sufficient implementation. Lack of incentive structure can be significant mitigating factor for technological change, even if no other constraints, such as internal fund etc,	

Table 13 – IP and Developing Countries

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Developing Countries		Musu, Ignazio.	Diritti di proprietà intellettuale e biotecnologie. Un approccio economico	Mulino	2007	Y	Biotechnologies, patents underline the benefits rather than the costs of the innovation itself Developed countries to justify their legislation on intellectual property rights and on antitrust to avoid that protection of IP rights leads to an excessive market power and to undervaluing the social costs of the innovations	http://www.mulino.it/riviste/web/scheda_articolo.php?id_articolo=19646
Developing Countries		Esposti Ongaro, Thomso	New Frontiers of the Global Market	Forum Sociale Pisano	2007	N	Collective re-appropriation must be developed, as in alternative forms like General Public Licenses as in the Free Software community Civil and organized disobedience supported, as the position taken by the South African government against the exclusive license of transnational Bristol-Myers Squibb and its anti-HIV medicine	http://www.comune.pisa.it/legambiente/propint.htm .)
Developing Countries		Plasa, Wolfgang	Percepción Sobre Piratería Editorial En Chile	Camara Del Libro	2007	Y	Example of the EU for Chile? Acknowledging economic and social consequences, also for the global development upon violation	http://www.camaradellibro.cl/capacitacion/seminario_ue/ponencia_wolfgang_plasa.pdf
Developing Countries		Sgro, Alessandra	Diritti Di Proprietà Intellettuale E Diritto Allo Sviluppo	Delle Organizzazioni Non Governative Per La Cooperazione Internazionale Allo Sviluppo	2007	Y	IP indirectly and directly influences socio-cultural, economic and environmental dimensions of community. How IP to affect most impoverished countries, debates to mobilize civil society to support a positive and sustainable role in IP protection regimes in the North South disequilibrium	http://www.cocis.it/sito/index.php?option=com_content&task=view&id=46&Itemid=32

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Developing Countries		De Robbio, Antonella	Diritto Di Accesso Ai Contenuti E Diritti Di Proprietà Intellettuale	Università Degli Studi Di Padova	2007	N	IP derives from social consensus, with strong cultural component. Obliging rest of the world to approve incompatible norms and laws with local cultures and traditions. CHINA: To adjust from a millennia old culture of collective ideas to IP. EX SOVIET UNION: Growing hatred to control to access to contents, limitation of liberal circulation of ideas. AFRICA: societies which for millennia lived in oral cultures, artistic expression was fundamentally religious, copyright seen as form of colonialism, abstract and contradictory	www.cab.unipd.it/eventi/2001/ernovembre.ppt
Developing Countries			The Globalisation Debate: An Opportunity or Threat to Developing Economies	Ghanian Chronicle		N	Highly stringent intellectual property laws, most often created by developed nations, further exacerbate this unequal flow of information. Because of very strict intellectual property rights, the price of knowledge has increased greatly. Therefore, companies have developed tight research schedules to develop drugs and agricultural technologies that benefit the developed world instead of focusing on eradicating diseases and droughts of the developing world	
Developing Countries		Engelberg, Alfred B.	Property rights and danger of a new form of colonialism	Financial Times , London, England	2005	N	Developed nations will not hesitate to throw their intellectual property regimes overboard to satisfy their national interests. Yet they do not seem to appreciate the burden that excessive intellectual property protections impose on developing nations with fragile economies and limited resources	
Developing Countries			German chancellor wants to give globalization human face	BBC Monitoring Europe - Political	2007	Y	However, progress in climate protection or the protection of intellectual property rights was inconceivable without the threshold countries. he second issue, "innovation", would also deal with intensifying the struggle against product forgery and market piracy.	
Developing Countries	IGO		Public health, innovation, and intellectual property: progress made by the Intergovernmental Working Group	WHO		-	Developing countries should adopt or effectively implement competition policies in order to prevent or remedy anti-competitive practices related to the use of medicinal patents, including the use of measures that favor competition available under intellectual property law. Bilateral trade agreements should not seek to incorporate "TRIPS-plus" protection in ways that may reduce access to medicines in developing countries	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Indigenous		Marinova, Dora and Raven, Margaret	Indigenous Knowledge and IP: A sustainability agenda	Institute for Sustainability and Technology Policy, Murdoch University			he inadequacy of the current intellectual property laws is well documented. Shiva (2000) describes the patenting of indigenous knowledge as double theft – first, big companies acquire ownership over something that does not belong to them; and second, the established patent rights prevent indigenous people from exploiting the economic opportunities linked to this indigenous knowledge. The (paternalistic) encouragement of indigenous people to learn and use the ‘advantages’ of the current patenting systems is not an appropriate policy. There should be policies in place to insure that alternative approaches, such as indigenous partnerships with commercial companies, are applied to prevent the theft and exploitation of indigenous intellectual property	

Table 14 – IP and China

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
China		Roberts, Dexter	Enforcer of Last Resort	Business Week Online	2007	Y	Vice-Premier Wu Yi to tackle IPR in China, To restore faith in Chinese Goods. Embarking on nationwide campaign to motivate public, boost coordination among ministries for IP protection	Academic Search Premier. EBSCO. 11 Nov. 2007
China			IPR protection makes steadfast progress			Y	The Copyright Law, enacted in 1990, was amended 2001, reflecting the development of new technology and made way for tougher prosecution of copyright infringements.), China amended its basic intellectual property legislation to comply with the requirements of the global trade club and honour its commitments to the international community.	
China		Choate, Pat	The Pirate Kingdom			Y	China is the global epicenter of pirating and counterfeiting. The United States should bring an intellectual property case against China at the W.T.O. Then, if China still won't honor its intellectual property obligations the United States should bring an intellectual property case against China at the W.T.O. Then, if China still won't honor its intellectual property obligations	
China		Savadove, Bill	International help needed to combat piracy, says official; Enforcement 'is difficult for an increasingly global	South China Morning Post	2006	Y	International help needed to combat piracy, says official; Enforcement 'is difficult for an increasingly global	
China			Developing Self-Owned IPR	China Daily	2002	Y	Improve our capability of innovation, develop more technologies with self-owned intellectual property rights to secure long-term competitiveness and defend the country's economic security	

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	SOURCE
Asia	Academic	Endeshaw, Assafa	Do Asian Nations Take Intellectual Property Rights Seriously?	Script-Ed, Volume 4, Issue 2, June 2007	2007	-	Incalculable damage to the interests of Western corporations and IP owners making Asian IP laws similar to US/EU ones, local innovation remains relatively lower. The perception that IP rights can be enforced regardless of the absence/down playing of human rights seems to be a self-serving facade put up by Western powers to look after their corporations ahead of the general interests of Asians. current tendencies of forcing nations into TRIPs plus regimes might have the unfortunate effect of fostering rebellion.	
Asia	Academic	Endeshaw, Assafa	IP enforcement in Asia: A reality check	International Journal of Law and Information Technology, Vol 13. No. 3 Oxford University Press	2005		Driving forces in Asian non-ICs still external pressure and threats of sanctions. Asian countries criticizing US lack of appreciation in IPRs - growing resentment against the charge of piracy levelled at Asian nations has not lead to any concerted attempt to redefine the nature of the dispute that continues to simmer between those nations and the US --> rapidly increasing efforts of local inventors and businesses may transform IP in given countries	
Asia		Teng, Simon	Moving beyond the law: foreign pressure and the politics of piracy in China	Journal of Intellectual Property Law & Practice, Vol. 1, No. 6			Book Review: The Politics of Piracy – Intellectual Property in Contemporary China --> ‘Chinese counterfeiting networks have become increasingly sophisticated and decentralized’. The factories that manufacture counterfeit products are all over China. In many cases, factories that produce legitimate products also produce counterfeit products. Distribution centres and retailers that engage in piracy are also discussed. Disruption of the counterfeit networks in China is challenging because of its diffused nature and the economic benefits (eg taxes) that flow to the relevant government authorities. Addressing China’s IP problems does not begin and end with ‘reforming’ national legislation. To neglect the manner in which the various IP bureaucracies function and operate in their environment will result in being unable to capitalize on the full benefits conferred by the law.	

Table 15 – Video Material

SUBJECT	TYPE	AUTHOR	ARTICLE TITLE	CITATION	YEAR	PRO-IP	EXCERPTS/SYNOPSIS OF ISSUES	LOCATION
Limitation of Search	Academic	Schultz, Jason	Intellectual Property & Search	University of Berkeley	2007	-	Control of online info, Trade Secrets, Copyright Trademarks: Prevents consumer confusion - threats to search - Google copied books to sort out relevance, opposition from authors, Tim O'Reilly: obscurity greater threat than copyright infringement	http://youtube.com/watch?v=YxLTUzCudcw
Relevance IP	Business	Schmidt, Eric	CEO of Google discusses Intellectual Property	Google Conference	2007	Yes	Company would not exist without IP, work with IPs, best: largest number of people to see most amount of information and pay for it, iTunes --> analogous models for all media industries, Google critically dependent on IP	http://youtube.com/watch?v=Zi3Q40EPUjk
Protection IP	Business		Protecting Intellectual Property	UHY's Business in the Eye of the Storm	2007	-		http://youtube.com/watch?v=rvJSKlsjGog
Software IP	Business		Business Models Within the Video Games Industry	Stern Business School - NYU			In the games sector, fans loyal to brands, increase in development costs, more pressure to license content --> upward pressure	http://youtube.com/watch?v=WkCXtquJP6c