

International Intellectual Property Law as a (Sub)Discipline

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Introduction

- Thinking about international intellectual property (IIP)
 - Differing approaches
 - IIP is local, local is IIP

Evolution of IIP

- From 'niche' to 'core'
- The foundation of IIP
 - FCN
 - Berne and Paris Conventions
 - WIPO
- TRIPS Agreement

Impact of the TRIPS Agreement

- TRIPs changes the landscape
 - Increased importance
 - IP as a tradable good
 - Uneven bargaining positions
 - New interpretive techniques
 - New interpreters
 - Increased number of negotiators

The backlash

- Misunderstandings
 - Developed countries underestimated implementation issues and problems
 - Developing countries underestimated obligations
- TRIPs as the cause for every problem

The backlash

- Media as a weapon
 - Essential Medicines and Public health
 - Forum Shift

The counteroffensive

- Maximalists Strike Back
 - Forum Shift and (potentially) “Ratchet”
 - Enhanced Enforcement

Experimentation and Differentiation

- IIP is harmonising IP law, but...
 - Flexibilities
 - Scope to shape the future direction of IIP
- Using IIP law for developmental purposes
 - Granting patent protection
 - Exhaustion of IPRs
 - Exceptions to owner rights

IP and development

- Granting patent protection
 - Obligations under TRIPS Article 27
 - Explicit exclusions
 - Excludable inventions

Granting patent protection

■ TRIPS Article 27

- [P]atents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application...patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

Exhaustion of IPRs

- TRIPS Article 6
 - International, regional or domestic exhaustion
- Pharmaceutical, pricing and diversion issues
- Discrimination as to field of technology

Exceptions to owner rights

■ Compulsory licences

- Government use
- Combat anti-competitive behaviour
- Lower cost, increase access
- Working a patent

■ Counterweights

- Economic reprisals
- Technological and managerial knowhow

Exceptions to owner rights

■ Flexibilities

- Object and purpose of IPRs and TRIPS
- Article 30 exception
Article 39.3 (test data)
- Non-commercial experimentation

Conclusion

■ What is IIP?

- A sub-discipline of IP
- A sub-discipline of international trade law
- A discipline of its own

■ Opportunities

- IP as a tool for development
- Scope for leadership in future negotiations