



**Asia-Pacific
Economic Cooperation**

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Day 1 Session 1

Intellectual Property in Digital Trade: The Multilateral State of Play

Submitted by: World Trade Organization



**Workshop on Protection of Intellectual
Property Rights in Digital Content Trade
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APEC meeting – IPR protection in digital content trade

IP in Digital Trade: The multilateral state of play

2021

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IP challenges of digital trade ...

... and international regulatory responses

Challenges:

- Territoriality of IP rights
- New IP uses in digital trade (products and distribution)
- New IP business models (platforms vs users)

Regulatory responses:

- International private law / conflict of laws
- International standards (TRIPS / WIPO)
- Regional / sectoral harmonization
- Technological solutions (TPMs / DRM)



Copyright issues in the digital context (1)

multilateral responses



- General principles enshrined in the TRIPS Agreement
 - Subject matter, automatic and independent protection, availability of exceptions
 - National treatment and MFN (no exceptions for FTAs/RTAs)
- Digital update WIPO Copyright Treaty and WPPT (1996)
 - Browsing and caching – reproduction? (Art. 10)
 - Right of making available (Art. 8)
 - Protection for technical protection measures (Art. 11)
- Differences remain
 - Ownership questions
 - Term of copyright
 - Scope of exceptions and limitations

Exception Regimes - Examples

fair use doctrine

- open factors
- case-by-case approach (judge)
- flexibility
- quick reactions to new developments ?

statutory exceptions

- fixed requirements
- closed catalogue of limitations (legislator)
- legal certainty
- slow reactions to new developments ?

Copyright issues in the digital context (2)

international responses



- FTAs / RTAs in the region contain numerous rules on IP in the digital context
 - Reference to WIPO internet treaties
 - Term of protection
 - Definition and scope of protection of TPMs
 - **Liability regimes for internet service providers (ISPs)**
 - KORUS, CETA and CPTPP
 - all regimes enshrine “safe harbour” principle, i.e. exemption of ISP from liability for copyright violation by platform content if a certain take-down procedure is in place
 - no general monitoring obligation
- No common approach to current issues such as online exhaustion, orphan works, data mining, creations and infringements by AI systems

Trademark issues in the digital context (1)

multilateral / international responses



- General principles enshrined in the TRIPS Agreement
 - Subject matter, grounds for refusal, availability of exceptions
 - National treatment and MFN (no exceptions for FTAs/RTAs)
- Digital update – non-binding WIPO Recommendations:
 - Joint Recommendation concerning provisions on the Protection of Marks, and other Industrial Property Rights in Signs, on the Internet (2001)
 - Joint Recommendation concerning Provisions on the Protection of well-known Marks (1999)
- FTAs / RTAs contain relevant provisions
 - Incorporation of Joint Recommendations (soft law -> hard law)
 - Domain name provisions (KORUS, JPN-CH)

WTO Staff Working Paper ERSD-2021-4:

Intellectual Property and Digital Trade - Mapping International
Regulatory Responses to Emerging Issues

https://www.wto.org/english/res_e/reser_e/ersd202104_e.htm

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