

Volume 9

Perspectives on Intellectual Property

EDITORS Dr Peter Drahos and
Professor Michael Blakeney

IP in Biodiversity and Agriculture



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Perspectives on Intellectual Property: Volume 9

IP in Biodiversity and Agriculture

Volume editors: Dr Peter Drahos and
Professor Michael Blakeney

Perspectives on Intellectual Property is a series of books each concentrating on a particular aspect of intellectual property law. Each book has an international scope and a depth of analysis greater than can usually be found in journal articles. This series brings together a team of expert editors and contains contributions from a range of academic writers and specialist practitioners.

The *Perspectives on Intellectual Property* series is edited by Professor Michael Blakeney, the Herchel Smith Chair and Director of the Queen Mary Intellectual Property Research Institute, Queen Mary, University of London. This volume is co-edited by Dr Peter Drahos, Herchel Smith Senior Research Fellow in Intellectual Property at Queen Mary.

This volume contains a collection of papers focusing on the need for global intellectual property regulation to be integrated with the regulatory objectives to be found in the international regimes governing biodiversity, food and agriculture. The essays draw attention to this broad set of global regulatory agendas with which intellectual property systems, principally through the auspices of TRIPS and the WTO, are now irrevocably linked.

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Michael Blakeney

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Foreword

One effect of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has been to raise the profile of intellectual property rights. The rules and practices which make up the institution of intellectual property have gained the attention of a wider audience and become more transparent as a result of their inclusion in the World Trade Organization (WTO) regime. International NGOs such as Greenpeace, Oxfam and Médicins Sans Frontières are much more conscious of the effects of intellectual property rights on the issues that matter to them than they were prior to TRIPS. Moreover, intellectual property is no longer just trade-related, because the WTO is no longer just a trade organisation. The WTO has become a key meeting place in the global village. It is a place in which environmental issues, labour standards and human rights issues are increasingly being linked to investment, competition and market access agendas. It has become a place in which global regulatory issues are discussed and decided.

Intellectual property rights are being required to serve much broader regulatory agendas than they have in the past. As the essays in this volume make clear the objectives of global intellectual property regulation have to be integrated with the regulatory objectives to be found in the international regimes governing biodiversity, food and agriculture. So, for example, it is accepted by states that the International Undertaking on Plant Genetic Resources must guarantee access to essential plant genetic resources in order for agriculture to progress. Progress in agriculture aids the goal of food security. Intellectual property rights, however, provide the basis upon which their owners may exclude others from access to, amongst other things, plant genetic resources. Clearly, if intellectual property regulation is to co-exist with and complement the regulation of food and agriculture, a great deal of dialogue and complicated international and national standard-setting will be required.

In the past the main regulatory objective of intellectual property rights has been to promote the allocation of resources to technological and cultural innovation. The use of intellectual property solely for this purpose is being questioned from a variety of perspectives. Intellectual property rights, as the literature on the Convention on Biological Diversity shows, are seen to be important in an equitable sharing of the benefits of the technological pie and not just in an increase in its size.

The controversy over biopiracy, which is discussed in some of the essays in the present volume, also shows that many people now expect intellectual property to serve distributive values. Environmental discourse through the agency of the Brundtland Commission has introduced the idea that technological development must be sustainable. Article 27(2) of TRIPS allows for the exclusion from patentability of inventions that seriously prejudice the environment. Future intellectual property regulation may be called upon to play a much greater role in managing technological change as opposed to simply promoting it.

Similarly, human rights discourse is challenging the neo-liberal agenda of market globalisation. One result of this has been a questioning by the Human Rights Commission of the extent to which the globalisation of intellectual property rights serves basic human rights such as the right to health and the right to education. The patent system, for example, seems to have been very efficient at delivering blockbuster life style drugs like Viagra, but much less efficient when it comes to allocating resources for the development of vaccines for tropical diseases like malaria. The many documented cases of biopiracy in which traditional knowledge and biological materials are used without permission by patent seekers over that knowledge and material hardly squares with Article 15 of the International Covenant on Economic, Social and Cultural Rights which recognises the right of everyone to take part in cultural life and to benefit materially from scientific productions of which he or she is the author. Intellectual property rights, by allowing for the commodification of the most basic biological information, have the potential to turn traditional groups into trespassers in their own cultures. The design of future intellectual property rights will have to pay much more attention, one suspects, to the international human rights framework.

The essays in this volume draw attention to a broader set of global regulatory agendas with which intellectual property systems, principally through the auspices of TRIPS and the WTO are now irrevocably linked. Traditional defenders of intellectual property rights may wish it were not so. However, the failure to engage meaningfully with the role of intellectual property in the regulation of food, agriculture, biodiversity, the environment and health will lead intellectual property into a crisis of legitimacy much deeper than the one it is currently experiencing. The papers in this volume address aspects of this crisis and suggest ways in which intellectual property regulation can progress.

Queen Mary Intellectual Property Research Institute
 Peter Drahos
 Queen Mary
 University of London

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