



International Federation of
Library Associations and Institutions

Trade and Inclusive Access to Knowledge

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Trade deals are popularly associated with a lack of transparency and a tendency to favour sectoral, rather than public interests. To overcome this, such agreements need both to be inclusive in the way they are negotiated, and inclusive in the way their results play out.

This is particularly true as concerns access to knowledge, with deals to date tending to increase the scope and duration of copyrights, primarily benefitting the content industry. Did recent developments confirm this, or were there signs of change?

Marietje Schaake MEP opened, reflecting on her own work to promote inclusive trade and IP provisions within the EU and globally. The public interest, she noted, 'should extend beyond borders, and prevent strong enforcement or high prices from negatively impacting people in developing countries'.

Michele Woods, Director, WIPO Copyright Law Division noted that the organisation's norm-setting work was no longer just about IPRs. The Treaty of Marrakesh was as much a human rights as an IP treaty. With the focus now on libraries, education and research institutions, it would be necessary to take account of an ever wider set of perspectives. However, she was optimistic that WIPO would manage to consider these questions fully.

Maryant Fernandez-Perez (EDRi) underlined that the EU so far had done little to promote access to knowledge, either in its internal policies or its trade negotiating stance in TTIP. By treating copyright as a human right, the Commission had forgotten former UN Special Rapporteur on cultural rights, Farida Shaheed's affirmation that access to knowledge as the real human rights issue.

Jonathan Band underlined that notwithstanding clauses that harmed the public domain, the final text of the TPP also showed that trade deals could help promote a more balanced IP system. Based on US law, the provisions of Article 18.66 placed a limit on the Three Step Test (TST), which itself restricted to effect of exceptions and limitations to copyright to particular cases.

Jamie Love (KEI) noted that the TST had become ever tougher and more complex, and harmful to public welfare. Secretive trade negotiations, with heavy industry lobbying, had allowed this. WIPO's more open approach provided an alternative. Greater clarity on the TST was needed – if it could be shown that countries disagreed on its meaning, more power to decide on its application would revert to governments.

Professor Bernt Hugenholtz contrasted an old-school view that thought more IP was always better, with a new, more nuanced approach. Copyright was just one among a range of tools

for promoting public welfare, and if applied too strictly could do more harm than good. We were perhaps on the verge of seeing the long-standing lip-service to balance and welfare maximisation in IP regimes included in Treaties finally turn into action.

In conclusion, there were signs that trade and trade-related deals could not only be negotiated in a more transparent fashion, following the example of WIPO. With negotiations affecting an ever-wider range of issues, openness was vital in order to avoid mistakes linked to taking too narrow a perspective. Yet transparency was not a cure-all. The resources needed to engage properly in negotiating rounds excluded most, but experience showed that it helped.

Similarly, TPP and the Treaty of Marrakesh showed that it was possible for such deals to lead to greater access to knowledge. Meanwhile within the EU, the Commission was proposing mandatory cross-border exceptions and limitations to copyright, although it was not clear if the EU's trade negotiations were reflecting this. As Professor Hugenholtz suggested in closing, 'the tide seems to be turning'.

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