

Introduction to Intellectual Property Law

Outline

1. Nature of intellectual property: why is it both like and unlike ordinary real property?
2. What IP Law protects
3. The TRIPS Agreement and other international IP standard-setting instruments

I. Nature of IP: similarities with 'ordinary real property' (ORP)

Existence of rights and remedies for unwarranted interference

The right owner exercises control over the property

Nature of IP: differences from 'ordinary real property'

ORP:

Assume the quality of property by '**mere existence**'

Ownership has **no expiry date**

Is **rivalrous and excludable**

IP:

Must qualify for protection according to **stringent criteria**

Rights **expire after prescribed periods** or may be subject to compulsory licensing

Is **nonrivalrous and non-excludable**

Ordinary real property:

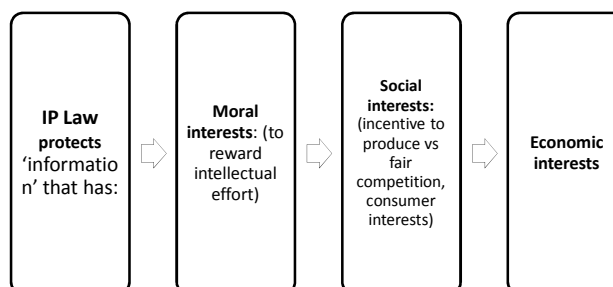
Real property is inherently rivalrous. It is diminished or depleted by use. This means that one person's use of the resource excludes all others from using it.

Intellectual property:

Intellectual property is *nonrivalrous*. It is not diminished by use. There is therefore no need **in principle** to have exclusive rights to it to protect it from being used by others.

II. What IP Law protects

Because intellectual property is non-rivalrous and non-excludable it is an excellent candidate for being treated as common property.



IP law: initial definition

Intellectual property law is **generally** understood to be a grouping of various laws that confer a bundle of exclusive rights (also called *monopoly rights*) to certain types of information or ideas **in their expressed form**.

Balance in IP protection?

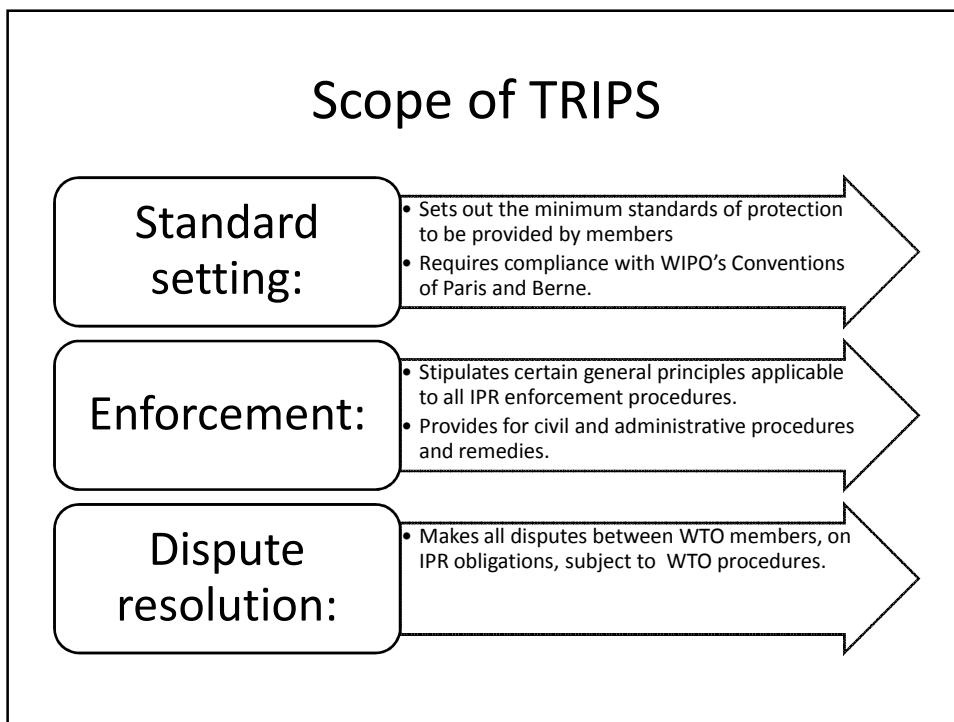
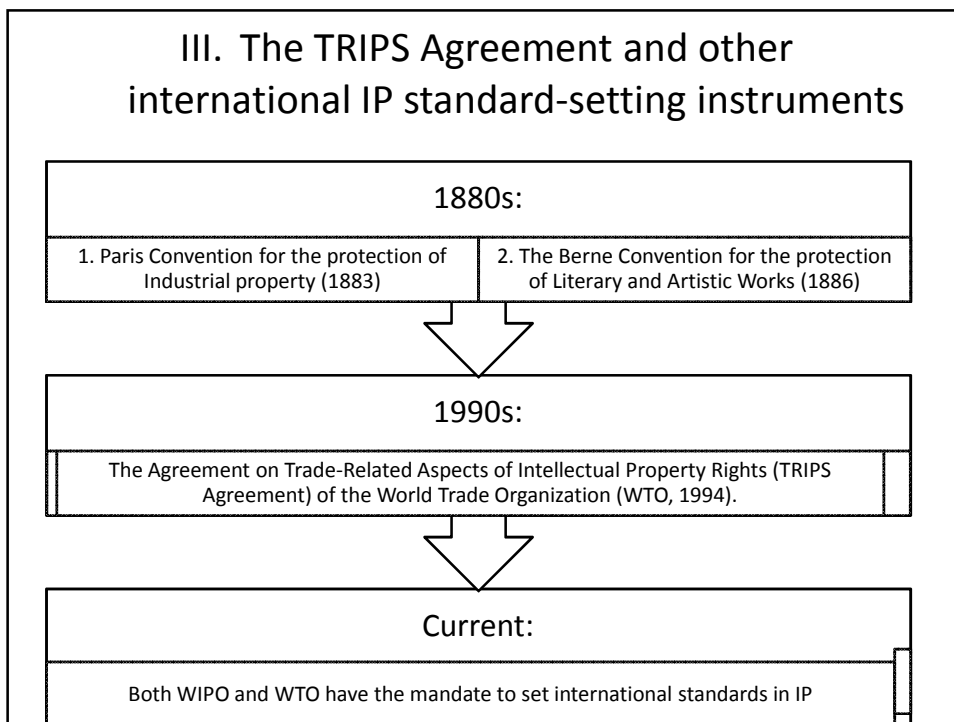
“[IP] is a social product...[with] a social function...the private interests of authors...should not be unduly favoured and the public interest in enjoying broad access to their productions should be given due consideration.”

- Committee on Economic, Social and Cultural Rights, General Comment No.17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from Any Scientific, Literary or Artistic Production of Which He Is the Author (Article 15, Paragraph 1 (c), of the Covenant), January 12, 2006

Why protect IP?

Intellectual property resources are inherently *public goods*

– without legal regulation they are *non-rivalrous* and *non-excludable*.



TRIPS Art 1(2) :

For the purposes of this Agreement, the term “intellectual property” refers to . . .

- (1) copyright and related rights;
- (2) trademarks;
- (3) geographical indications;
- (4) industrial designs;
- (5) patents;
- (6) topographies of integrated circuits;
- (7) undisclosed information (trade secrets or confidential information)

Geographical indications

TRIPS Art 22:

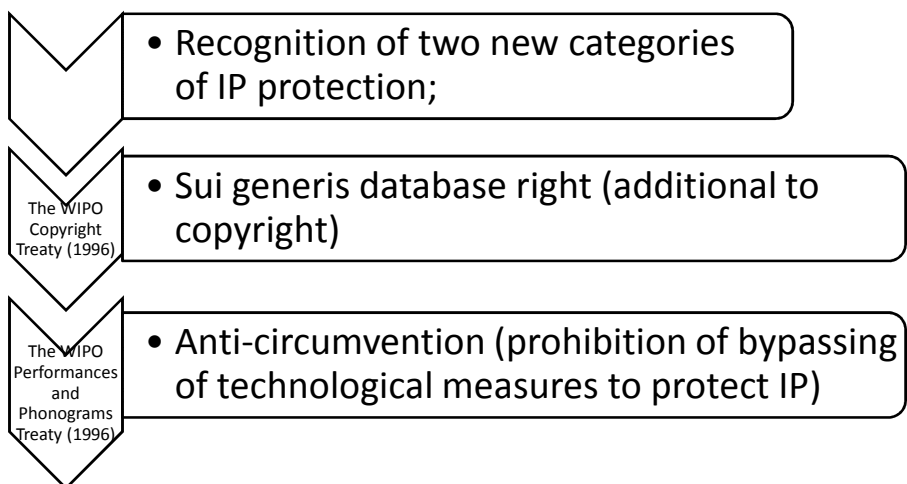
Geographical indications are . . . indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

topographies of integrated circuits:

- “(i) **‘integrated circuit’** means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function,
- (ii) **‘layout-design (topography)’** means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture ... ”

-Article 2 of the Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC Treaty, 1989).

Developments under TRIPS:



Emergent rights

