The Political Economy of Intellectual Property Treaties Revisited

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The conventional justification for global IP treaties such as the TRIPS Agreement is that information is a global public good that will be undersupplied without coordination among nation-states, and that global enforcement of IP is the only way to prevent states from free-riding on each other's information production. Without coordination, one might expect that rational states would underinvest in mechanisms such as IP laws, grants, tax incentives, and prizes. And it might seem that non-IP innovation incentives are infeasible without a global public finance system, thus making IP the logical focal point for coordination. Previous authors have adopted this logic while lamenting its implications: IP appears to be the only solution to the free-rider problem at the global level, even though IP imposes greater deadweight losses than other innovation incentives.

We argue that this account of IP treaties as a solution to a global public goods problem is incomplete in three respects. First, it is wrong to assume that without coordination there will be rampant free-riding. Governments at all levels facilitate significant transfers to information producers beyond what is required by international agreements. The conventional free-riding narrative overlooks the heterogeneous nature of information, the array of innovation incentives beyond IP, and extensive scholarly work in the field of international political economy that illuminates states' diverse motivations to invest in information production. Second, for situations in which coordination is desirable, it is incorrect to assume that IP is necessarily the best focal point; the diverse policy levers within domestic IP laws make it more difficult to police transfers under IP laws than under other mechanisms. Third, even when IP is the global coordination mechanism, it is wrong to assume that this dictates how individual states incentivize innovation or allocate information goods at the domestic level. States can comply with international IP treaties such as TRIPS while relying primarily on non-IP incentives and non-price mechanisms for allocating information goods within their own borders.

Our more nuanced account of information production at the global level does not necessarily imply that TRIPS is misguided; rather, our analysis highlights the specific benefits that TRIPS provides. Most significantly, TRIPS allows each signatory state to select the domestically optimal set of incentives and access-allocation mechanisms while also sharing the costs of information production with other countries. The choice of IP as a global coordination mechanism has undeniable distributive consequences, but these consequences can be offset through more direct interstate transfers. Finally, insofar as international coordination on IP does lead more countries to implement IP protections at the domestic level, the welfare consequences are not as negative as previous authors have assumed.