

Hamilton and Hansen The TRIPS Agreement

I. Overview: According to Marci Hamilton, the Agreement Involving Trade-Related Aspects of Intellectual Property Rights, TRIPS for short, attempts to remake global and specific cultural perspectives about owning intellectual property in the image of Western copyright law. In "The TRIPS Agreement" (chapter 9), Hamilton claims that, if successful, TRIPS will become "one of the most effective vehicles of Western imperialism in history." The problem she finds with the agreement and the emerging global information infrastructure is that the war between information access and copyright protection is being won by the latter. This movement is particularly troubling as we move to an on-line age where the free-use zones of "first sale" and "fair use" are in danger of being abandoned because of protection-enforcement problems. Hamilton concludes that the copyright protections found in TRIPS should be tempered to ensure the widest possible dissemination of information consistent with fair remuneration to authors and inventors.

A. Western Copyright Imperialism

1. *Individualism*: Individual human creative effort is valuable.
2. *Reward*: Society should single out original products of expression by granting their owners proprietary rights over them. Reward is determined according to the qualities of the product; mere effort is not sufficient to deserve such reward.
3. *Commodification*: Products should be capable of being disassociated from their producers and sent through the stream of commerce. In other words, product creators need not be the product's owners or distributors. Indeed, in the interest of achieving the greatest distribution of copyrighted goods worldwide, creators probably should not be the primary distributors.
 - a. There is an intimate link between respect for individual human rights and respect for a copyright system that values and promotes individual human creative achievement.
 - b. China is a good example of a country that denies human rights and Western style copyright norms.

- i. Chinese culture does not elevate "the new" in the same way that the West does. Tradition is not a past to overcome but rather reversed. Copying is looked upon as a noble art.
- c. The TRIPS agreement may be a vehicle for social change in authoritarian countries. To be a part of the global market-place a country must play by certain rules -- and if the rules are violated then market sanctions will take hold.

B. TRIPS On-line: Outdated and Overprotective

1. Hamilton thinks that determining an optimal balance between access and protection is a vexing problem -- the problem with TRIPS, she says, is that it bestows a windfall on copyright holders. Question: should governments be in the game of determining the appropriate balance between access and protection?
2. Access Norms v. Copyright Norms
 - a. The Value of Access: information and access are important to free speech -- being an informed educated individual is a part of being an enlightened citizen.
 - b. The Value of Protection: creates incentives for authors and inventors to produce, protects personal integrity, etc.

C. The Free Use Zones

1. Review of "fair use," "first sale," and the "expression/idea" rule
2. The task for national and international policy makers lies in constructing an appropriate free use zone in an on-line world.
 - a. The Hackers: "Information wants to be free" Hackers charge that modern copyright institutions will soon be swept aside in the emerging on-line environment.
 - i. Hamilton warns that this would be a bad thing -- with no protection there would be no incentives to produce and therefore fewer intellectual works.
 - ii. Technology makes copying difficult to police and if enforcement mechanisms are not efficient the quality of works on-line will suffer.

- b. The Publishers: A global internet or web will allow for the possibility that all uses of a work can be tracked and subject to a charge. Browsing can be monitored -- lending can be interpreted as copying. The free use zones of first sale and fair use will shrink.
 - i. This policy would allow publishers an absolute monopoly over the distribution and access of copyrighted information.
 - ii. Such a policy would increase the disparity between the information "haves" and the information "have-nots."

D. Enforcement of Copyright on the Net

1. Monitoring Agencies like ASCAP or BMI could be used to decide how much an author or inventor should receive for the on-line use of a protected work.
2. Personal Lending -- Individuals should be permitted to transmit copies of works on-line to friends or family for personal and private use.
3. Library Copying -- on-line libraries should be able to operate as they do in the physical world. Patrons should be able to read copyrighted books, magazines, etc. without purchasing them. Public free libraries play an important role in an egalitarian society.
4. Commercial Browsing -- publishers should not be permitted to charge customers for browsing through their various products (maybe a free "teaser" system could be implemented).

Questions:

1. Should public policy be determined on a model of access verses protection?
2. What justification for IP does Hamilton assume without argument?

Hugh Hansen
International Copyright: An Unorthodox Analysis

II. Overview: Hugh Hansen, in "International Copyright" (chapter 10), continues the discussion of the international aspects of copyright protection. He draws an analogy between the defenders of Anglo-American copyright protection and religious missionaries. The TRIPS agreement can be understood as an attempt to convert newly industrialized and developing countries to Western views about copyright protection. Given what is at stake, Hansen argues that voluntary conversion probably will not suffice, prompting those who would defend copyright protection to rely on sanctions or involuntary conversion.

A. Net Seller-Exporters, Developing Seller-Exporters, Net Users

B. Voluntary Conversion

1. Conversion by Example — If you want to have the good life, like us, then you will adopt our model of intellectual property protection.
 - a. The user views intellectual property as a hindrance to immediate gratification and given the length of copyright this is a tough road to hoe.
2. Moral Conversion — Adopting an Anglo-American system of intellectual property is the right thing to do.
 - a. Few users believe that copying is wrong or that God would frown on it.
3. Conversion for Benefit — Net Users should convert because it will help them in the long run.
 - a. But in the long run we are all dead.

**Thus, Hansen thinks that the prospect for voluntary conversion are slim.

- C. Involuntary Conversion: With voluntary conversion hopeless, Net Exporters and Developing Exporters will adopt enforcement mechanisms. These come in the form of trade sanctions and economic aid sanctions.

Questions:

1. Is it wrong to force someone or some country to do what is right?
2. Is there a right and wrong when it comes to international treaties and intellectual property?
3. Is it relevant at all that the US did not initially recognize the copyrights of Great Britain or other countries — is this the pot calling the kettle black?