

*Trade's Horizon and the Evolution of  
"Trade-Related Aspects of Intellectual Property Rights"*

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This Article argues that much of the discomfort surrounding modern global regulation of intellectual property rights (IPR) through the World Trade Organization (WTO) and other trade initiatives stems from the impossibility of ascertaining a static definition of either trade or intellectual property. In fact, the evolutionary nature of both international trade law and intellectual property law renders fruitless any attempt at genuine stability where those fields intersect. Yet, the phrase "trade-related aspects of intellectual property rights" supposedly delineates the WTO's IPR mandate. While early post-WTO literature pointed out the difficulty of ascertaining which aspects of IPR were "trade-related," the issue lay virtually dormant for years, resurrecting in the wake of a wave of free trade agreements and other plurilateral initiatives such as the Anti-Counterfeiting Trade Agreement (ACTA) and negotiations toward a Trans-Pacific Partnership (TPP) agreement. This Article posits that changes in the volume of international trade transactions, in the accessibility of the global marketplace, and in technology since 1994 have so deeply impacted both trade and IPR that neither field resembles its pre-WTO self. The vast metamorphoses in both fields have raised the proverbial bar in regulating "trade-related" IPR to an unreachable height, resulting in an overbroad mandate for the WTO. Viewed in this light, one can see that the proliferation of FTAs and plurilateral initiatives is symptomatic of the resulting, predictable shortfall at the WTO. Thus, it is time to rethink, redefine and reallocate international IPR mandates according to criteria that are practically manageable in today's globalized, Internet-driven world.