

3. Strengthening intellectual property rights

Intellectual property (IP) is an increasingly important part of international trade. Many products, from new medicines and pharmaceutical products to high tech goods such as smartphones, involve large investments in research and design. In fact, most of the value of such products lies in the amount of innovation, ideas and knowledge involved. Music recordings, films, books, computer software are creative products that are bought and sold for the ideas they contain rather than for the support on medium through which they are traded.

Protecting IP has become a key preoccupation of businesses, creators and innovators. Over the last decades, a comprehensive set of rules has been developed at the national and multilateral levels to provide adequate protection of IP and ensure the fair remuneration of creators and innovators. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which came into force on 1 January 1995, provides a general framework of minimum standards for the protection and enforcement of IP rights applicable to all WTO members. It includes disciplines on copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations); trademarks; geographical indications; industrial designs; patents; the layout designs of integrated circuits; and undisclosed information, including trade secrets and test data. The World Intellectual Property Organization (WIPO) administers no less than 26 treaties that cover the whole range of IP rights. The principle WIPO treaties on copyright, patents, trademarks, and industrial designs are integrated by reference into the TRIPS Agreement. An increasing number of free trade agreements also contain provisions on IP.

The rules exist, but administration and enforcement remain, in many cases, a challenge. As copyright does not require registration and is available upon the creation of an original work, determining the right owner can be difficult and sometimes impossible. As a consequence, authors and performers often struggle to be paid for their creation, and when they do, a large part of their revenue is often captured by intermediaries, such as labels or record companies, performance rights organizations and streaming digital service providers like Spotify, in the case of music. This situation has caught WTO members' attention. Brazil, in a submission to the WTO General Council in December 2016, called for "a decision on the management of copyright towards fair payment for authors and performers" in which WTO members would "stress the importance of transparency in the remuneration of copyright and related rights in the digital environment" (WTO, 2016a).