



Note on the TRIPS Agreement and Education

1. What is the TRIPS?

- The Agreement on Trade Related Intellectual Property Rights (TRIPS)¹ is one of five legally-binding treaties administered by the World Trade Organization (WTO) that came into effect in 1995. *The TRIPS Agreement requires all WTO Members to enforce a wide range of protections for holders of intellectual property rights.* Intellectual property rights covered by the agreement include copyright, patents, trademarks, geographical indications², industrial designs, integrated circuit designs (i.e. semiconductor chips), and undisclosed information (trade secrets).
- The TRIPS agreement requires WTO Members to ensure that intellectual property rights are granted to foreign companies and individuals in the same way they are granted to domestic persons (*National Treatment*). Nationals of any WTO Member country must not be treated better or worse than those from another Member country (*Most-Favoured Nation*).
- The Agreement also obliges WTO Member countries to comply with the obligations of the main conventions of the World Intellectual Property Office (WIPO) — the *Paris Convention*³ for the Protection of Industrial Property and the *Berne Convention*⁴ for the Protection of Literary and Artistic Works. *It goes beyond the Paris and Berne Conventions, however, by requiring countries to treat computer programs as “literary works” under their domestic copyright law.* The agreement also includes areas — such as pharmaceutical products — not previously protected in many countries.
- Unlike the WIPO Conventions, *the TRIPS Agreement is enforceable through the WTO’s dispute settlement process.* Violations can result in trade sanctions.
- In practical terms, *the TRIPS Agreement has compelled many WTO Member states to strengthen their intellectual property laws.* WTO Members are required to extend copyright terms to at least 50 years after the death of the author, although films and photographs are only required to have fixed 50 and 25 year terms, respectively. Patents must be granted in all “fields of technology” for 20 years. Most importantly, exceptions to intellectual property rules — such as “fair use” or “fair dealing” with respect to copyrighted material — must be strictly limited.
- When the TRIPS took effect, developed countries were given one year to comply with the obligations of the treaty, while developing countries and transition economies were given five years. Least developed countries were expected to comply with TRIPS by 2006, but were granted a further ten years in respect to the patent protection extended to pharmaceutical medicines.

2. Why has the TRIPS Agreement been so controversial?

- The most publicized controversy over the TRIPS has centred on *access to medicines*. The strengthening of patent protection for pharmaceuticals has led to significant increases in drug prices as the production of cheaper, generic drugs is prohibited for at least 20 years. India’s patent laws, for instance, had allowed cheap copies of medicines to be made without a licensing fee. In 2005, however, to comply with TRIPS, India changed its patent legislation to end this practice.

¹ http://www.wto.org/english/docs_e/legal_e/27-trips.pdf

² Geographical indications are terms that identify a product as originating from a specific geographical area. Examples include “Champagne” and “Roquefort” cheese. Geographical indication rights are intended to prevent others from using such terms.

³ <http://www.wipo.int/treaties/en/ip/paris/>

⁴ <http://www.wipo.int/treaties/en/ip/berne/>



- The TRIPS Agreement requires that patents be granted to inventions in all “fields of technology” — including biotechnology. That means that seeds and medicines developed through biotechnology must be granted patent protection. However, in many cases, particularly in the developing world, these “new” discoveries are actually based on local and traditional knowledge. Companies have claimed and patented this knowledge as their own. The result is that local people now have to pay for the seeds and medicines they have collectively developed over time. This is referred to as “*biopiracy*” by developing countries.

3. What are the potential implications of TRIPS for Education?

- *Access to teaching and learning materials* remains a real problem in many parts of the world. Most developing countries rely upon imported books and materials, and many students and educators are only able to access these in the form of unauthorized copies. The more restrictive copyright standards enforced through the TRIPS Agreement and backed up by the threat of trade sanctions could further reduce access to teaching and learning materials.
- *All countries are finding it increasingly difficult to obtain copyright clearance and pay royalties for materials needed by teachers and students.* Even many of the better-funded libraries and schools in the developed world have been forced to reduce their subscriptions to journals and other educational materials due to rapidly rising costs as a result of both consolidation in the publishing industry, and strengthened copyright protection.
- Under the TRIPS Agreement, computer software products now qualify for the same copyright protection as literary works. This significantly raises the price of off-the-shelf products like word-processing and spreadsheet programs that schools need. *Copyright protection enables software companies to prevent copying, limit competition, and charge monopoly prices.* In countries where the costs prove prohibitive, such technologies will simply not be available to students.
- National copyright laws in most countries allow for exceptions, with varying degrees of flexibility, for copying for education, research, and personal non-commercial use. This is the principle of “fair dealing” or “fair use”. In the TRIPS Agreement, however, member countries are required to apply such exceptions very restrictively. *It is not clear whether more liberal applications of the principle of fair dealing are consistent with TRIPS.* As such, TRIPS may potentially restrict the ability of teachers and students to access copyright material through fair dealing.

4. Conclusion

- The TRIPS Agreement primarily serves the interests of the holders of intellectual property rights. *A more balanced approach to intellectual property rules is needed* to ensure that legitimate uses of copyrighted and patented material not be constrained.
- In order to protect and promote access to teaching and learning materials, *all countries must be allowed to maintain or adopt broad exemptions for educational, research and library uses in their national copyright laws.*
- Improving access to teaching and learning materials in the developing world is vital to achieving the goal of “Education for All.” *Developing countries need to be allowed greater freedom than provided for in the TRIPS Agreement to adapt international copyright rules to meet their educational and research needs.*