



International and domestic dynamics of intellectual property protection



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ABSTRACT

I examine the variation in the extent of intellectual property (IP) protection across countries. Combining insights from the 'old' and 'new' institutional perspectives, I argue that global pressures stemming from commitments to the World Trade Organization influence IP protection, but countries differ in their sensitivity to external pressures due to differences in domestic characteristics. The presence of a domestic interest group positively moderates the relationship between WTO commitment and stronger IP protection while domestic public health concerns negatively moderates this relationship. Data on IP protection for 65 countries during the period 1995–2006 provide support for the hypotheses.

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1. Introduction

With the global expansion of business activity, the role of intellectual property (IP) institutions in host countries is gaining increased importance. A number of recent studies have found this aspect of a country's institutional environment to be a significant determinant of a multinational firm's strategic choice (see, for example, Lee & Mansfield, 1996; Oxley, 1999; Javorcik, 2004; Jandhyala, 2013). Yet, large variations persist in the effectiveness of IP protection across countries, and there is a growing international debate on the costs and benefits of stronger IP protection (Huang & Murray, 2009).

New global rules regarding the treatment of intellectual property were created with the establishment of the World Trade Organization (WTO). The global governing body established rules regarding the treatment of IP through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)—a binding international agreement governing how countries grant and protect IP. In this paper, I examine how a country's WTO commitments can influence the nature of IP protection. A deliberate use of coercive economic power in the form of trade-related punishments for countries that fail to protect IP assets adequately can elicit instrumental compliance among countries. As commitments to the WTO vary by country, and change over time, variation in the extent of IP protection is observed.

Further, building on the 'new' and 'old' institutional theories, I analyze how the global pressure stemming from the WTO interacts with domestic pressures to explain the variation in IP protection across countries. In other words, I examine how countries differ in their sensitivity to external pressures due to domestic characteristics. I examine the differences in country sensitivity by focusing on two domestic aspects—the presence of domestic groups whose interests are aligned with IP protection and the domestic public health concerns which lead social actors to demand concessions of IP protection. Together, this analysis addresses how the global pressures and their moderating factors influence country choices.

In characterizing the environment for IP protection, the literature has primarily focused on the formal regulations that govern it. Hence, countries that proclaim membership in international treaties, or develop policies and procedures geared toward enforcement are considered to have stronger IP *regulations*. However, a growing body of work cutting across fields observes that formal policies are imperfectly correlated with their effectiveness. International obligations and external pressures may usher in IP reforms that have little to do with day to day practices (Shadlen, Schrank, & Kurtz, 2005). In other fields, we observe that Russian shareholders' rights are systematically trampled upon in spite of a highly refined corporate law (Berkowitz, Pistor, & Richards, 2003) and restrictions on current account exist notwithstanding commitments to international monetary law (Simmons, 2000). Thus, even among countries with seemingly similar regulations, the *de facto* IP protection may vary. As a result, my analysis focuses on *de facto* IP protection (henceforth, IP protection).

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I test my arguments for IP protection using a cross-national panel dataset of 65 developed and developing countries during the period 1995–2006. I find that WTO commitments have the proposed effect on improving a country's IP protection. Further, the results also suggest that presence of economic groups that value IP protection positively moderates the effect of WTO commitment (weak support) while domestic health concerns negatively moderate the effect (strong support). The analysis thus provides support for the role of international pressures in determining the extent of host country's IP protection, and the domestic conditions that moderate a country's sensitivity to external pressures.

My study makes two contributions to the literature. First, the study extends our understanding of how global and local pressures together can alter domestic outcomes. Although prior literature has indicated the role of external and internal factors in understanding effective implementation of a policy (see, for example, Westphal & Zajac, 1994; Fiss & Zajac, 2004; Hafner-Burton & Tsutsui, 2005), this paper draws from both the 'old' and 'new' institutional perspectives to examine how the external and internal pressures interact to produce differences in country level outcomes. Second, this study explores how institutions evolve in a host country in response to economic, political, and social pressures. While most studies in the literature assume the institutional environment to be fixed and exogenous, this paper sheds light on how some actors can influence the institutional environment in the context of intellectual property protection.

2. Theory and hypotheses

By the early 1990s, global IP standards were built into the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO) and acquired the status of public international law (Sell, 2003). As intellectual property (IP) regimes gained prominence in the international agenda, rich and poor countries alike have reformed their copyright, patent, and trademark legislature and there is convergence of overall IP laws (Shadlen et al., 2005; Allred & Park, 2007).

However, the cross-national convergence in laws and policies notwithstanding, countries demonstrate vast variations in the extent of *de facto* IP protection. For example, Brazil adopted stringent and TRIPS compatible laws to protect computer software in 1998. The enforcement of these laws is lax and more than half of the Brazilian market was composed of pirated products with trade losses amounting to nearly \$1 billion in 2004 (IIPA, 2005). As international obligations and external pressures may usher in reforms that have little to do with actual practices on the ground. I focus on explaining the variation in IP protection rather than IP regulations.

How can we explain the variation in IP protection across countries? I integrate ideas developed in the 'old' and 'new' institutional perspectives, following the approach advocated by several authors (Hirsch & Lounsbury, 1997; Oliver, 1991; Thornton & Ocasio, 1999). Although institutional theory was originally developed in the context of organizational studies, this approach has been extended to the study of economic, political, and social outcomes at the country level (see, for example, Henisz, Zelner, & Guillen, 2005; Polillo & Guillen, 2005). While the effectiveness of IP protection is a country level policy decision, many processes mimic those of organizations. In enforcing IP protection, a country needs the coordination of legal, regulatory, bureaucratic, and other state actors within a well-defined boundary. Such a decision-making process is similar to the distributed decision-making in organizations, and hence, countries may be viewed as particular types of organizations (Weber, Davis, & Lounsbury, 2009). Like their organizational counterparts, countries face internal and external

pressures for legitimacy (Henisz & Zelner, 2005). Countries are also embedded in a system where they interact with other countries, and learn from the experience of others (Simmons, Dobbin, & Garrett, 2006), just as organizations do. Thus, I draw on the institutional perspectives to provide insights into country level outcomes.

Traditional explanations in the 'old' institutional theory (Michel, 1962; Hoffman, 2001) focus on internal factors. Differences in outcomes are assumed to be driven by varying values, interests, and power dynamics internal to the actor. This approach is also consistent with the traditional approaches of the international political economy (IPE) scholarship developed to explain differences in country level outcomes as a function of domestic characteristics. For instance, in providing effective IP protection, factors such as state capacity or institutional development may matter. Countries with higher income levels have the resources to build better administrative bureaucracies, train personnel, access relevant information, and improve the civil service. These factors ensure better monitoring, implementation and protection (Weiss & Jacobson, 1998; Marron & Steel, 2000). Similarly, domestic institutional factors such as the type of government may play a role—democratic governments are less likely to engage in rent seeking and other forms of predation while promoting the rule of law (Hathaway, 2002; Li & Resnick, 2003).

However, we observe global trends that are not entirely explained by internal characteristics. For example, even among countries with similar domestic characteristics, we observe vast differences in IP protection. India and Vietnam had similar levels of per capita GDP in 2002 but the extent of IP protection in India was much greater than in Vietnam. As seen in Fig. 1, the average IP protection (using a proxy of software piracy rates) across the world has improved dramatically, but few countries have witnessed corresponding changes to their political systems (Shadlen et al., 2005). Fig. 2 plots the extent of IP protection and regime type for some developed (panel A) and developing (panel B) countries over time. In each case, we observe that while domestic regime type has remained relatively stable, there have been marked changes in the extent of IP protection.

To complement the approach of the 'old' institutional and traditional IPE theories, the 'new' institutional approach provides a different perspective. Originally developed in organizational studies, actors are considered to be part of a larger, interdependent system. As a result, external pressures – cognitive, cultural, and normative – influence organizational behavior (Meyer & Rowan, 1977). Actors routinely follow dominant policies or practices regardless of their functional utility in order to respond to their



Fig. 1. Worldwide software piracy rate, 1995–2006.

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