

# Welfare Implications of Intellectual Property Enforcement

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## Abstract

The enforcement of intellectual property rights is often presented as a neutral legal phenomenon aimed at ensuring compliance, or giving effect or force to a law. Enforcement of intellectual property rights has gained increasing international attention and legal strength. More and more, existing international substantive standards are being supplemented with secondary norms, which in principle deal with the fulfillment of the former. However, the value placed on these secondary norms and intellectual property enforcement initiatives contrasts with little knowledge or understanding of their implications for resources and overall welfare. Moreover, the aforementioned neutrality recedes when it becomes apparent that some of the enforcement provisions contained in treaties, in fact, constitute a substantive expansion of rights instead of merely adding secondary norms of adjudication. This trend requires a much better understanding of what enforcement signifies and what the costs of implementing international intellectual property commitments may be, taking account of its effect on the economy and on society as a whole. This understanding may be particularly important when a lack of ownership of the agreements setting up new enforcement obligations exists, namely, when some of the parties are pursuing goals distinct from those mentioned in the text of the agreement.

A useful analytic tool with regard to the definition of enforcement can be found in the distinction between primary and secondary norms, with enforcement norms falling into the category of secondary norms of adjudication. Additionally, when considering the resource implications of enforcement, it is important to distinguish between the costs of enforcement and the welfare effects of enforcement. The costs of enforcement represent the investment a country makes in order to adequately comply with the commitments it has made, whilst the welfare effects denote the impact of new enforcement measures, assessed using variables that stem from the initial economic variables affected (i.e. production, exports, imports, investment). These changes in turn affect consumption and access to public goods, expenditure and welfare.

This conceptual framework leads first to seek to identify the costs of adequately complying with a treaty, and second to devise a methodology that allows, in a case-specific manner, to identify the impact or effects of enforcement measures on the economy and on society as a whole.

*Seuba, Xavier, Joan Rovira, and Sophie Bloemen. 2010. Welfare Implications of Intellectual Property Enforcement Measures. PIJIP Research Paper no. 5. American University Washington College of Law, Washington, DC.*