



What Developments for the International Intellectual Property System?

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“Framing” Intellectual Property

- Susan Sell, *Private Power, Public Law: The Globalisation of Intellectual Property Rights* (CUP 2003) (the framing of IP as a trade issue)
- Amy Kapczynski, *The Access to Knowledge Mobilization and the New Politics of Intellectual Property* 117 *Yale Law Journal* 804 (2008)
- Duncan Matthews, *Intellectual Property Law, Human Rights and Development: The Role of NGOs and Social Movements* 7-9 (Edward Elgar 2011) (framing strategies connected to human rights and development)
- Peter Drahos, *Does Dialogue Make a Difference? Structural Change and the Limits of Framing* 117 *Yale Law Journal Pocket Part* 268, 272 (2008) (discussing dangers of framing as a “master mechanism” for the development of international IP)
- Sebastien Haunss and Kenneth C. Shadlen (ed), *Politics of Intellectual Property: Contestation over Ownership, Use and Control of Knowledge and Information* (Edward Elgar 2009) (noting cultural frame)
- Rochelle Dreyfuss and Cesar Rodríguez-Garavito (ed), *Balancing Wealth and Health: The Battle Over Intellectual Property and Access to Medicines in Latin America* (Oxford University Press 2014) (discussing effect of reframing trade issue as a public health issue)

“Framing”

- Frame: “a **rigid** structure that surrounds or **encloses** something such as a door or window.”
 - Frame as Constraint
 - TRIPS as a Frame?
 - Floors and Ceilings
 - Constraints: Loose or Tight?
 - TRIPS confines but does define
 - Porous Structures by Design
 - Use of external influences/frames to inform/shape

Frame as Constraint: Rigid?

- Reasons for Impervious frame
 - Political Economy
 - Fundamental rights
 - human rights as rights “that exist independently of the vagaries of state approval, recognition, or regulation” (Helfer)

Frame as Support

- Frame: “basic structure that underlies or supports a system, concept, or text”
 - Many of frames *seen* as challenges
 - But actually sustain or support, lending legitimacy
- Concept of Frame Most easily fitting academic work

Framing as Skewing

- fix or predetermine an outcome (cf behavioural economics)
 - Human rights?
 - A myth
 - see *Anheuser-Busch*
 - *See Charter, art. 17*
 - Trade?
 - A function of political or institutional concerns
 - But these are important

Characteristics of the Different Frames

- Economics
 - justification or support
 - Trade and human rights
 - brings institutional baggage
 - May affect what frame can legitimately do
 - Culture and Development
 - Political resonance greater
- * If frames have different characteristics, perhaps they have different roles?

The Role of Frames

- Do they constrain, do they justify, or do they shape?
- International versus national
 - Margins of appreciation for diverse countries
 - Entrenchment
- Explanatory versus Doctrinal
- Institutional competence/legitimacy
 - WTO as the World Court
- The False allure of Conceptual Order
 - The strategic value of outsider institutions and frames
 - Value of integration?