

A BRICS Intellectual Property Policy: Why It Is Needed, And What It Could Look Like

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1. Introduction

This paper states the case for an independent BRICS Intellectual Property policy. By a “policy,” I mean a set of agreements and laws intended to provide for the mutually beneficial exchange, deployment, and use of technological and artistic products between and within nations. By “independent” I mean unconstrained by existing regulations such as those that bind signatories to the World Trade Organization (WTO) or the World Intellectual Property Organization (WIPO). Rather, I argue, a new world IP system is required, which over time should take precedence in the sovereign nations concerned. The emerging BRICS institutions are well-placed to shape such a system and bring it into being.

To avoid misunderstanding, “independent” does not mean “unilateral.” This paper seeks to provoke a discussion on principles; decisions on when or how these may be implemented is a matter for the relevant political institutions. A parallel is the dollar-denominated world trading system; in both cases, there is an excellent case for an alternative that benefits all humanity. But the practical steps involved must be worked out between the many nations which, having diverse systems and interests, but recognizing the benefits, can participate in devising and share in implementing.

That said, a different IP system, I argue, is as important and as urgent as a new trading system.

2. Intellectual Property and the unipolar moment

1995 was, arguably, the pivotal year of the “Unipolar Moment.” It produced the WTO, incarnating the ideal of a rules-based international trading order overriding the jurisdiction of all purely national states. Participation in it, dubbed the Washington

Consensus, was the cornerstone of US foreign policy until US policymakers recoiled from the consequences of Chinese membership.

It is now clear that this framework was no sooner achieved than it began to dissolve. It is not our purpose to comment on the reasons, because our proposal does not depend on why it came apart; it refers to what should be done afterwards. We focus on one point, less widely grasped than history requires. This is the formation, in parallel with the WTO, of a new organization unenvisaged in 1947: the World International Property Organization (WIPO).

At its inception in 1970, the WIPO was an ineffectual talking shop with only 23 members. In 1995 it was transformed into a powerful multilateral “rules-based” organization with a membership approaching 200, integrated into the WTO framework but operating as an independent body.

The WIPO codified and institutionalized practices that had been taking shape for some time. But unlike the WTO, the successor to the 1947 General Agreement on Tariffs and Trade (GATT), the WIPO did not implement any previously-agreed proposal: it created something new. This new thing, we argue, is as decisive an element of the present world order as the dominance of the dollar.

3. How did the WIPO define intellectual property?

There have been global world markets before—for example at the turn of the century or indeed, though arguably, in the era of the world trading system of the Ottomans. But when history repeats itself, it either brings new elements into being or transforms old ones so much that they become their own opposite. The reconstruction of the world market has brought with it two new developments in property relations: GATs or the General Agreement on Trade in Services, and TRIPS or the Trade-Related Aspect of Intellectual Property, which seek to establish a worldwide market in knowledge.

The WIPO redefined the words “extension of trade” to mean “restraint of trade.”¹ The original intention of IP was to diffuse technology and protect creators. The function of the WIPO was to restrict diffusion and protect owners. To this end it imposes the owner’s rights on the creators and enforces their ability to prevent others using their technology. It subordinates the inalienable human right to create knowledge to a monopoly on its use.

BRICS should seek an alternative which protects creators, promotes the spread of technology, and provides the income needed to sustain those whose livelihood depends on these activities.

How does the WIPO work? It changed the way in which products with mental content were traded.²

- It prescribed a *universal* law which was to apply in all countries regardless of national interests or differences. This deprived nations of the patrimony of their own natural resources, converting their agricultural systems into “products” of pharmaceutical companies, and denied them the right to use

¹ The earliest recognition of this contradiction came from L. von Mises and the Austrian current in economics continues to oppose it on fundamental grounds. See for example [Wisuniewski 2020].

² See [Bodrunov 2022a,b,c].

these resources for their own people. It produced the scandalous result, visible during the coronavirus pandemic but evident in the treatment of AIDS, that entire populations were denied access both to generic and imported drugs which “violated” IP. More fundamentally, it deprived nations of the sovereign right to deploy technology in a manner suited to their society, culture, and existing level of development.

- It changed the *timespan* of IP to 70 years, that is, beyond the active lifetime of a typical human. This greatly lengthened the protection provided by patent, which was typically 10–15 years in most countries. It cemented in law the practice, already widespread in the US, of “blocking patents”—their use not to engage in production but to prevent others doing so. In effect it abolished the prevailing principle of “use it or lose it.”
- It merged two quite different types of IP, being patent and copyright. Patent was intended to *encourage innovation* by allowing inventors to realize sufficient profit to cover their expenses. Copyright (as its French name *droit d’auteur* tells us) was meant to *provide authors with an income*. The effect was to make creativity a corporate, rather than a personal right, creating the conditions for “slave contracts”³ obliging artists to sign away their rights to perform as the only way to secure a reliable income.
- It substituted, for the *duty to employ* a new technology, the *right to prevent* its use by others. The prevention of infringement became the principal source of a new industry of litigation. The result was the weaponization of IP, notably by the US in its political struggle with China. The chief accusation of the US in its battles with Huawei, TikTok and others is that China is “stealing” US technology. This is intimately linked with the charge that the national defense interests of the US are threatened if China develops its technology. This enters into fundamental conflict with the preceding, enlightenment principle that access to human knowledge is the right of all humans.

4. Where did the WIPO come from?

The change arose neither from any natural process nor a general consensus that it would lead to mutual benefit. It was the result of a systematic and well-funded campaign by specific US lobbies. Intellectual Property Rights (IPRs) emerged as a central aspect of a general US campaign on trade which Bhagwati (1993) designates as “Aggressive Unilateralism.” This centred on section 301 of the Trade and Tariff Act of 1974, a keystone of US trade legislation. It was elaborated in sections 301 to 306 in 1984, and in sections 301 to 310 of the “Omnibus Trade and Competitiveness Act” of 1988. These acts remain in force.

³ The phrase “slave contract” was coined by George Michael in a dispute with Sony Music Entertainment (UK) Ltd. with whom he had signed a life contract which forbade him to perform any of his own works except as explicitly permitted by Sony. He sued Sony in 1992, but in 1994 the UK High Court found against him, ruling that this type of contract was normal in the entertainment industry. Shortly before his death, Michael recorded a video documentary entitled “Freedom” which covered the issue extensively and can be viewed at <https://www.dailymotion.com/video/x6lxlra>. See [Coulthard 1995].

Section 301 raised hackles because it provided for the US itself to undertake mandatory action in pursuit of the enforcement of GATT-agreed arrangements, whether or not GATT procedures had been exhausted or indeed, explored. The US thus set itself above the same international legal framework from which it drew justification for its actions and the claims that its partners had trade obligations to it. The “Super 301” and “Special 301” provisions raised this to a new level. Bhagwati (1993) records that

Super 301 required the US Trade representative to prepare an inventory of foreign trade barriers, establish a priority list of countries and their unreasonable practices, and then set deadlines for their removal by the foreign countries, and, should they fail to comply, for decisions on retaliation by the United States. Special 301 is similar in its time-bound approach but is addressed specifically to intellectual property rights.

He goes on to remark that

Section 301 is characterized by the (wholly distinct) fact that it enables the United States to unilaterally make demands for trade concessions by others without offering any matching, reciprocal concessions of its own that others might demand in turn.

IPRs fall into three categories: trademark goods (designer and branded products), copyright goods (artistic materials), and patent goods (industrial processes and their products). Copyright law has been significantly extended to include software. Bringing these three categories together signifies, essentially, a generalized alienation of mental products and their transformation into a distinctly marketable entity. A patent, a copyright, or a trademark embodies the right to produce “something” defined not by what it is or contains, but by the knowledge or information that distinguishes it. Software, the most advanced form of IPR, involves hardly any material product at all. What is actually sold is the legal right—or license—to use the software in your own production processes.

IPRs, like GATS, defined trade barriers in terms of the US internal legal regime. The US explicitly sought, and through the WTO achieved, changes in the internal structures of its trading partners and rivals to harmonize their copyright and patent laws with its own, with a view to stamping out what it characterized as “piracy”; the production of copies. It abandoned the existing, bilateral structure for Intellectual Property safeguarded by the United Nations body known as the World Intellectual Property Organization (WIPO) precisely because of this need. The WIPO operated on the old GATT principle of non-discrimination; as Maskus (1993. P. 82) delicately explains:

the prevailing policy principle in WIPO is national treatment, which requires countries not to discriminate between domestic and foreign firms in its IPRs. However, this principle does not prevent the level of protection from being weak if a particular country so desires.

The US sought to ensure that the country’s desires would not enter into the matter. Prior to the Uruguay round, India provided a seven-year patent protection for

pharmaceutical production processes and none for pharmaceutical products; as a WTO member it became obliged to extend protection on both to twenty years, which it spelt out in the 2005 amendments to its 1970 Patents Act. It had to do this in order to comply with the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) of the World Trade Organization (WTO), which require member countries to establish a product patent regime for all fields of technology, including pharmaceuticals and chemicals, by January 1, 2005.

In plain English, the legislation makes it illegal for India to cure its sick, while the TRIPS agreement deprives the Indian people of the sovereign right to do anything about it.

This illustrates our principal point: this “extension” of the market demands a restriction of production. The US manufacturers who supported Super 301 were concerned, not to protect the US markets against floods of fake Gucci watches and pirate CDs, but to prevent other countries making these same or comparable products themselves for their own use. In 1989 the US exported \$58.8 billion worth of goods sensitive to IPR, being 16.1% of its total exports, whilst Brazil exported \$2.0 billion, that is, 0.2% of total US imports, and imported \$2.4 billion, that is, 13.1% of its own imports.⁴

5. Why BRICS?

As the above considerations strongly suggest, the outcome of this process has been detrimental. Could it be improved upon? This is where the relevance of BRICS comes to the fore. What we have so far shown is that at the heart of today’s world trade system as redefined during the 1995 GATT process lies a concept of intellectual property that was determined not by the general interests of humanity or the shared interests of its nations, but by the private interests of a lobby within one nation—the US—which designed this concept to preserve and strengthen the rights of its dominant high-tech monopolists, caused it to be passed into US law, and thereafter caused it to be institutionalized in the provisions of the WTO.

How can an alternative be arrived at that is genuinely beneficial to all concerned? The principles concerned, I suggest, are quite similar to those of devising a fair and beneficial system for trade and finance that releases the World Majority Nations from the burden of US dollar hegemony. First, how should the principles regulating trade be arrived at? Certainly not by allowing a single nation to dictate them. It needs to be dealt with collaboratively.

Second, to what extent is an organization like WIPO or WTO appropriate for administering what is agreed? As with finance, the basic problem is that national requirements differ, and accommodation has to be made that takes into account the very different national requirements and level of developments of each partner to any agreement that may be reached, within the framework of general overall principles. This is not the same method as that of the WTO which is, in essence, to devise a single law for all and then construct an elaborate arbitration framework—which invariably works to the advantage of the richer nations [Freeman 1998b].

⁴ *The UN’s International Trade Statistics Yearbook* cited in [Maskus 1993].

Last but not least, any new framework needs to address a great historic inequity that is to a large degree responsible for the very marked differences between nations as regards their national income and development: this inequity consists, in essence, of an entrenched monopoly of high-tech production within what I term [Freeman 2024] the “Columbian Nations,” being the alliance of the US, Western Europe, Japan, and the settler colonies that currently dominates the world political economy.

BRICS, as it is shaping up, provides a superior framework for crafting a genuinely multipolar alternative approach to IP. As noted on the BRICS information portal [BRICS 2025] when the UAE announced its decision to join:

BRICS and the United Arab Emirates share a common goal of creating a more fair and balanced global order in which the economic and political interests of all countries are valued equally alongside those of traditional Western powers. At the heart of this vision lies the idea of moving away from an outdated model of global governance dominated by a few developed nations and towards a multipolar system that places greater emphasis on state sovereignty and equality. The foreign policy stance of BRICS countries is aimed at establishing conditions where not only the major Western economies but also developing nations can participate equally in addressing global issues. This approach is reflected in initiatives such as the New Development Bank and BRICS cooperation mechanisms, which provide developing countries with access to financial resources and alternatives to Western financial institutions.

My argument is quite straightforwardly that devising a new framework for defining and managing intellectual property rights belongs among the questions that BRICS partners should discuss among themselves.

6. Promote and Reward: The alternative to Enclose and Enslave

What principles might govern a new framework for intellectual property?

When the present system was created, in effect it also created a new category of commodity: knowledge itself. The Super 301 lobby, a narrow section even of US society itself—imposed an institution and a set of universal laws on the world, which gave them an extraterritorial right to criminalize the communication and application of knowledge.

Perhaps if the benefits of such a measure could be demonstrated, the methods involved might be excused. However, due consideration to the results suggests this was not the case. It deprived nations of the food sovereignty endowed on them by nature, by converting the genome of this product of generations into the property of a foreign person. It produced unnecessary suffering and death in the AIDS and coronavirus pandemics. It has fostered the weaponization of IP in the US administration’s trade war with China. And—perhaps most tellingly—the result is a demonstrable *slowdown* in the productivity growth rate of the technologically advanced nations.⁵

⁵ See Freeman, A., 2024. The Geopolitical Economy of International Inequality, Development and Change, <https://onlinelibrary.wiley.com/doi/10.1111/dech.12812>

These failures are the basis for the argument of this paper that IPRs are not a step forward, even compared to past forms of IP which, however much they could be improved on, at least provided elementary incentives to the innovator and independence for the creator without restricting the diffusion of technology or depriving creators of an income.

And neither are they a step forward compared to what is now possible. New technological developments, notably (but not exclusively) the Open Source, Open Access and Open Innovation systems, demonstrate that there are entirely different, and better, ways to achieve both the original purpose of the patent and copyright systems, and modern goals which were either not definable, or not achievable, in the past. The striking achievements of DeepSeek only serve to underscore the potential benefits of what I argue [Freeman 2025] is essentially a new technology, requiring a new form of property.

To identify and implement a better system it is useful, if not indeed essential, to define its goals. In general, of course, nations should strive for the twin and related goals of advancing the welfare and happiness of their peoples, and acquiring sovereignty over their development. But how do IPRs fit into this?

I suggest defining the primary function of a new system of intellectual ownership as to *Promote and Reward*.

- As regards scientific and technical discoveries, this means encouraging the rapid diffusion and application of these discoveries, in and through a method for rewarding those who play an active part in so doing. Primarily, those to be rewarded are therefore those whom nations can *put knowledge to work*: that is, the producers. The emphasis in this respect is on the “promote” side of the pair, the most problematic difficulty of national development being the application and use of technology in the specific circumstances of the nation.
- A second category, with distinct characteristics, comprises the “creative industries”⁶: all forms of creative activity that enhance human experience, from the more traditional forms of art, music, dance, or theatre to the myriad and growing range of new ICT-based products, be they films, videos, games, apps, or social media. Here, the primary problem is the “reward” side of the pair; as all engaged in this sector testify, the greatest difficulty is to ensure that creators receive an income that maintains not only their livelihood but their capacity to create: to develop their skills, build networks of co-producers, and find their audience.

Promoting and rewarding are two sides of a single coin. If a new discovery or art form is not put to use, the income required to sustain its creators will not come into being. Conversely, if the producers are not enabled to create, neither the discoveries nor the art will come into being.

But looked at from a world perspective, what is clearly required is a system of relations between nations which allows both for specialization and for exchange. No single nation can be at the forefront of all forms and practices of arts and sciences; they can, however, enter into agreed relations with each other that provide for an international system which meets the primary goals.

⁶ Bakhshi et al. (2013).

Do IPRs achieve this? The evidence is of two types. First, what IPRs actually do, and second, what has been, is being, and can be achieved without them.

The first defining feature of IPRs is that they transfer all *duties* in the management of knowledge from the humans that produce and use it, to those who can secure a rent from its ownership. This is a form of enclosure, not a form of promotion.

The second defining feature is that they equally transfer all *rights*, to the same degree. The consequence is that the producers have no guaranteed income and no right to a livelihood that allows them to continue functioning as producers. Everything they do, from the income arising from their art or discovery down to the very right to produce it, is subject to the will and decision of those who contract for their services or purchase the rights to them.

This combination, I suggest, should be designated *Enclose and Enslave*.

7. Distributed ownership: The fundamental principle of a pluripolar IP policy

Many proposals for improvement have come forward, not least because of the frustration and destruction arising from the WIPO system. The particular way forward I want to advance is the notion of Distributed Ownership, proposed by Sergey Bodrunov (2018) as part of the general concept of Noönomy.

We begin from the fact noted above, that IPRs transfer the rights and duties of the producers, in their entirety, to the owners. Moreover, they do nothing to correct one of the recognized deficiencies of the patent and copyright system, namely, they do nothing to provide for the rights of the consumer—a broader category than might be thought, since the consumers of technology include entire nations and thereby their states and governments, and operate in practice as a barrier to acquisition by the general public (just think of how expensive it is to buy a book, never mind apply a technology, and the point becomes clear).

That is to say, IPRs create a monopoly of all rights and duties without regard to producers and consumers alike, and transfer it to a corporate personality with no specific or legally defined interest in anything except the revenue stream arising from it.

The traditional alternative to monopoly—owning the single source of a product—is competition, creating many sources of the same product. But whilst this is quite easy to define as regards material products like food, raw materials, machinery, houses, and so on, it is by no means clear what is implied by “sources” of a product that is by its nature freely available. That is because the results of mental production⁷ are vastly cheaper to

⁷ I term these “mental objects.” A wide range of other terms are employed by others, including “knowledge,” “information,” and not least “culture.” I use the term mental object to define any identifiable non-material thing that can exist in a range of material forms, and can be converted from one form to the other without loss of identity. For example, a mathematical theorem can exist as a written text, a spoken presentation, or in the mind of the student, the lecturer, the researcher or the technician; a song can be printed, sung, recorded, broadcast, or memorized: no matter, it is the same song. Not least, language itself is a mental object and the repository of the most ancient treasures that have come down to us from antiquity—be they sagas, sacred texts, learned volumes, discoveries, records, or codified artisan skills. See [Freeman 2020].

reproduce than to *produce*—so much that for many writers, notably Aleksandr Buzgalin and Andrey Kolganov,⁸ such products form part of a “Creatosphere” whose elements should be entirely freely available to all.

The difficulty with the above concept is the “reward” side of “Promote and Reward.” A system that provides for the use of creative production must provide a livelihood for the producers; it cannot just cater for the users. The IPR legislation has a one-sided but clear answer to this problem; it is that this livelihood should be financed out of profit:

If an innovation has economic value but is also easily imitated, competing firms would copy and sell it, earning a share of the potential profits. In perfectly competitive markets, enough duplication would emerge to eliminate all profits... Intellectual property rights attempt to correct this problem by providing an exclusive right, or monopoly, to the innovative firm to sell or use the product or technology. Patents, trademarks, copyrights, and other IPRs limit market access to the innovation and raise its price [Maskus 1993. P. 72].

The difficulty here is the obverse of the creatosphere solution, but leads to the same result. The “exclusive right” to sell or use the results of creative labor confer no incentive, and no duty, to provide for that creative labor to exist.

What is poorly understood here is the difference between the monopoly system described above and the wage system. This is characteristic of mental products. Under the wage system, employers are obliged to provide for the livelihood of their employees, whether or not they desire to do so, because they cannot produce without laborers, whom they must find in the market and pay for. The wage system thus perpetuates the class of productive workers.

But the IPR does not perpetuate the class of creators. The owner of an IPR is not compelled to fund those who create his income. He need merely ensure that those who do so, give him a cut. This is an impediment, not an incentive, much less a compulsion, to fund the producers of his income. Just as the feudal landlord stood between the farmers and their laborers, taking a cut which reduced the income of both, so the IPR owner stands between the creative producers and the entrepreneurs who put their work into practical effect.

It is here that the concept of distributed ownership suggests a way forward. The modern juridical meaning of ownership is that all rights and duties reside in a single legal person. In Roman law this was known as *Jus utendi et abutendi*, the “right to use and abuse” and was distinguished from *Jus utendi*, the right to use. Ownership may be overridden, as when the law fines a polluter, but when a dispute goes to a court, there are two parties, the owner and the plaintiff.

This is not the same as when a property is jointly owned. In deciding what a corporation should do with its assets, the matter is settled between the parties—usually by a shareholder vote. But who should “own” knowledge? Who should take part in

⁸ It is with great sorrow that I record here my eternal debt to Sasha Buzgalin, whose passing has diminished us all beyond expression. Grinberg, R., Buzgalin, A., 2015. The Old Development Model Has Exhausted Itself. Where Does the World Move? *Russia and the Contemporary World*, 2, pp.30-43.

deciding what is to be done with it? Clearly, its users and its producers. If the users have no hand in the matter, their rights will not be protected. But if the producers have no say, the product will not even be created.

The juridical question as to “how should the law decide how knowledge should be managed” then becomes the following: “what form of legal ownership best guarantees that knowledge is created and used?” Hot on the heels of this comes the question “who should have authority to determine how knowledge should be managed?”

This may appear a pettifogging distinction. But in history, almost all fundamental social changes have arisen when societies reconsider what they will recognize as property, and who had authority over it. What is required is a system that provides for the *joint* ownership of the products of human mental production by its creators and users, which provides for the diffusion of the results, and the livelihood of the creators by providing mechanisms for agreement among the joint owners on how to realize the obvious mutual benefit from achieving both these aims.

Open Source and Open Access: twin future technologies for the management of Knowledge Distributed ownership is not a pipe dream. It is, in practice, driving the key emerging new approaches to the management of knowledge, namely Open Source and Open Access. These are most developed in the software industry technologies but increasingly widespread in other industries, notably publishing.

These developments are not marginal. The internet and the World Wide Web themselves are not the subject of patent but are administered by collective international organizations—as are a plethora of technologies that require standards for cooperative activity, such as electricity transmission, telecommunication, postal systems, or engineering designs. It is the formation of common, open standards that drives technical advance—not their conversion into private property. In the software industry, product after product is provided in two versions: the open source version, which anyone can reproduce, and premium services, which essentially sell not the product itself, but the capability to use it efficiently. Many special licenses such as Creative Commons, the MIT license, and others, provide protection against abuse without restrictions on diffusion—indeed, quite the reverse, since they specify that owners—who are generally speaking the original producers—have the right to *prevent* the privatization of their product.

Without Open Source, the modern computer as we know it would not exist. In a famous legal verdict known as the “ABC” verdict, that launched the IBM PC, it was found that Honeywell—who held a monopoly license on computer production dating back to the pioneering ENIAC computer, and used it to prevent any rivals competing with it—did not have the right to this license, because ENIAC’s builders had copied vital information from a physics professor in Iowa who developed the technology years beforehand. But unusually, the judgment did not award the license to anyone else. It simply declared that it was not valid.

The result was that *anybody* could make and sell computers. Nobody had the right to stop them. IBM, recognizing the significance of this decision, specified the standard that became the basic architecture of the modern PC and its descendants such as the cellphone and declared this to be an open standard. Third parties could make and supply anything using this architecture, and IBM would specialize in the areas of production where its

specialist knowledge provided what third parties could not. Over time, the entire PC industry grew out of the open sourcing of this design.

8. IP and national development

The rise of services and the decline of manufacture as the principal source of employment and value production will continue.

A world right in intellectual property can achieve progress if all nations have achieved equal levels of technological development, that is to say, in the productivity of their labor. Most if not all imbalances in trade arise when a nation whose labor is more productive trades with another whose labor is less productive, as a result of the process by which world prices are formed or “terms of trade” [Toye and Toye 2003]. These differences arise from the level of technology, because a more efficient producer has lower costs, and can undersell the less efficient producer whilst realizing a greater profit [Mandel 2024, Amin 2010].

The elimination of such inequalities thus requires that each nation can supply its producers as efficiently from within its economy as from the world market. But the present world system exchanges the advanced industrial products of the developed nations at high prices, against the primary and secondary products of the rest of the world at relatively low prices.

The WIPO enshrined, in institutional form, a series of provisions for world trade that were the subject of intense discussion leading up to the WTO’s establishment. It should be recalled that the WTO itself was the outcome of a round of discussions within what, at the time, was known as the General Agreement on Tariffs and Trade, or GATT. Each round of discussion is known by the country in which they were conducted, and the WTO was the fruit of the Uruguay Round of GATT. Thus, despite its impact, the WTO was nothing but the implementation of the Uruguay Round. However, side-by-side with these agreements came a second set, termed the GATS or the General Agreement on Trade in Services. The WIPO was the fruit of GATS.

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