A Study on Global Intellectual Property Right Governance: From the Perspective of Structure-Functionalism

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Using structure-functionalism as analyses method, this paper researches the functions of IPR NGOs, especially in the process of globalization, during which IPR NGOs took active part in the decision-making and enforcement of IPR international rules. The paper tries to answer following questions: What kind of new structures emerged in global IPR system? Why would they play such important role in global IPR governance? How to realize their functions? What influence would they bring? It was found that in the process of globalization, the structure of IPR management has changed and non-government organizations always play a crucial role in the making and implementation process of IPR rules. These changes have led to manifestations of features of the system functions hitherto unseen. Multiple subjects have integrated and expressed their interest by negotiation and competition, which has had profound impact on the operation of global IPR rules. It was also found that, owing to existing conflicts, the pluralistic structure of global IPR governance in international organizations, sovereign governments, enterprises, NGOs, while aiding the whole IPR system to maintain a dynamic equilibrium state, also manifests some negative features and potential function.

Keywords: Structure-functionalism, IPR governance, TRIPS Agreement, NGOs

Global IPR governance is a management mode, operating at the global level and in the sphere of IPR under the constraints of international regulations, which is involved in diversification and characterized by negotiation and consultation. This is a new type of IPR management on a global basis. Compared to that, the traditional form of IPR management may be called as a mode of public management. The public management mode of IPR has two principal features, i.e. monopoly of participant and one-dimensionality of power. It was found that there are some new actors (namely non-state actors) who take on functions different from tradition ones, which affect IPR international rules eventually. In the traditional IPR management mode, the participation of enterprises, industrial associations, NGO and other administrative bodies, is comparatively low, which renders the IPR rules to be in absence of legitimacy, transparency and responsiveness. In the management model, international IPR rules are established by every sovereign government in international organizations through negotiations and consultations; in the governance model, however, a change occurs in the influencing factors of sovereign national governments negotiations, which is revealed mainly in the rise of non-state actors. With enterprises, industrial associations, transnational IPR NGOs and other organizations possessing varied interest demands and acting at both national and international levels, they participate in and affect the development and implementation of international IPR rules vigorously. The TRIPS Agreement is the most obvious example of global IPR governance. The present dissertation—by employing rationale in the structure-functionalism in political science and taking the development and implementation of the TRIPS Agreement as an example,—explores what changes happen in the structure of the IPR global system and how do they implement the function. The author does not offer an analysis of the concrete text of the TRIPS Agreement, but rather proceeds from a structure-functionalism viewpoint—through an analysis of the process of settling, endorsing and enforcing of the TRIPS Agreement’s debated issues,—to dwell on how the structure changes, how to express and integrate interest, how to formulate and implement the agreement, and what kind of effect will

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those new actors bring about. The author's aim is also to probe into the driving forces behind that process and its operational mechanism, providing thereby countermeasures and suggestions for enhancing the efficiency of the global IPR governance system.

A General Theory of Structure-Functionalism

Structure-functionalists consider that society is an organism, composed of various systems, political, legal, cultural and social; different social structures assume different functions, thereby bringing balance and stability into society. From the perspective of system theory, Easton expounds structure-functionalism, taking the three links of abstract interaction between a political system and environment: input—transformation—output. He formulates an uninterrupted repetitive and full-cycled circulation process: input—transformation—output—feedback. Easton views political life as a behavioural system in an environment, affected by that environment and counteracting that environment at the same time. In order to achieve the system's function of maintenance, interaction, achievement of goal and adaption, there occurs a continuous interaction among the political system's institutions, social values and other significant factors, which leads to the system to be changed and thus reach an equilibrium state caused by self-adjustments within that system.

Structure and function are closely related. Structure refers to the organizational form existing in a system, and function refers to the necessity of a system to exist and evolve. Almond considers that each society member plays a different role in different social system, and the structure is formed by the combination of roles. For example, legislature is formed by a variety of interrelated and interacting roles; a political system is composed by multifarious interacting structures, such as electorate, interest groups, political parties, legislative assemblies, the government etc. Besides electoral institutions, political parties, state organs and other similar institutional components, the structural basis of a political system also includes other non-institutional components, such as political convictions and political attitudes. Almond, Powell and other scholars believe that all functions assumed by any structure within a political system, can be investigated at three levels, i.e. system level, procedure level and policy level. The system level is related to the functions of maintenance and adaptation. The procedure level involves four functions: interest expression, interest aggregation, policy establishment, and policy enforcement. The policy level has four functions: extraction, distribution, control (supervision) and symbolism. A political system is capable of maintaining its equilibrium owing to the realization of the functions at these three levels. This type of equilibrium is nevertheless not static, but maintaining a dynamic state by constant readjustment in a process of adaptation to environmental changes.

As a method of integral macro-analysis, the distinguishing feature of structure-functionalism is that, its main object is to analyse how the political behaviour interact within a political system and how to keep the political system integrated. Also, it observes the exchange process of materials, energy and information between the political system and the environment from a dynamic perspective. Its key issue is to study the ways through which the political system maintains its existence by means of transformations. How a political system sustains, adapts, adjusts and stabilizes itself? The critics of structure-functionalism consider that by focusing on the maintenance of political equilibrium or political order this theory tends toward conservatism; this theory, however—paying close attention to the feedback effects of the environment and advocating structural adjustment to the very system in order to adapt to environmental changes,—is an essential methodology in the study of political system. This study makes use of structure-functionalism as its framework, to perform an analysis on global IPR governance and explore its structural changes and the realisation of their functions. It is necessary to state that, the object of this study is not at all confined within one particular state, but refers to a global level. Following the globalization of economy, IPR has become a competitive instrument in global market. Then many IPR issues like public health, biodiversity, plant genetic resources in food and agriculture, human rights etc., have gone beyond the market and become matter of public policy for many sovereign governments. Moreover, they are also included into international negotiations’ agenda. Therefore, the study of IPR system should surpass the boundary of a single state and needs a global vision.

According to structure-functionalism, the sphere of global IPR, as a subsystem in the sphere of political system, possesses its own structure and assumes its specific function, whereby it maintains the dynamic
The global IPR system is viewed as a system composed of numerous political structures, including international organizations, state actors (sovereign state, legislature and judicial authority), non-state actors (enterprises and their trade associations, transnational IPR NGOs) and so on. The aforementioned structures assume the function of maintaining and stabilizing the system, integration and expression of interest etc., and have impact on establishing and implementation of international IPR rules, which is different from the traditional mode of IPR manage, in which the sovereignties collect, integrate and express interest mainly. Composed of multiple subjects, IPR governance system carries out exchange of information and energy with the outside world, forming a cyclic process of input—transformation—output. Moreover, during transformation various structures carry out consultations and negotiations whereupon they create system output (policy, i.e. international IPR rules). A policy inevitably creates impact which can be measured by value standards such as order, equity and justice. A change has occurred in the structure of the global IPR system which is not accompanied by non-state actors from the beginning; non-state actor emerges only in the wake of unceasing development of civil society. The intervening of transnational IPR NGOs and other similar structures in IPR domain has created interaction relations between international organizations, governments, enterprises and global civil society; it also has created a governance model in global IPR.

**Global IPR Governance Framework**

**Concept and Features of Global IPR Governance**

Currently there are few scholars focusing on the issue of global IPR governance, so it is necessary to define the concept and features of global IPR governance. The global IPR governance is a management model—in the domain of IPR and within the bounds of international regulations, which is involved in diversification and is characterized by negotiations and consultations. In order to decrypt the meaning of global IPR governance, the following three main points should be considered:

Firstly, existing international regulation is the premise. Professor Yu Keping considers that international regulations are binding institutional arrangements. In a sense, international regulations are the core of global governance: if there were no universal IPR norms, applicable to all humankind for common observance and having a real binding power over the entire global community, then it would be pointless to speak about any global IPR governance.

Secondly, participation bodies are diversified. On account of the variety of interest demands, the participants in global IPR governance are no longer restricted within the private sector, but widely involve international organizations, national government, private departments, domestic and foreign industry associations, NGO and other sectors. Participants not only break through the status quo of the public sector as a main body, but also establish patterns of cooperation or counteraction among private departments, national governments and NGOs.

Thirdly, interactions such as negotiation and consultation exist. In global IPR governance, the formulation and implementation of international regulations is no longer a traditional affair between sovereign governments, but—on account of the energetic promotion by private departments or NGOs and other non-state actors—in order to maximise their own interest, the government of each sovereign state, by continually employing all kinds of means, hold processes of negotiations and consultations. These processes also involve struggles and compromises, as well as cooperations and other patterns of game behaviour.

The traditional form of IPR management has two major traits, i.e. monopoly of participant and one-dimensionality of power. The so-called monopolistic participant refers to the government which is a single body mapping out the policies: regardless of framing the domestic IPR policies or participating in international negotiations, the actor is principally the government. The term one-dimensionality of power refers that the government is always the sole source of power: the government determines and implements the policies from top to bottom, and social subjects seldom interact with the government or influence government’s decision-making. That is why, in the traditional form of IPR management, the degree of political participation of enterprises, industrial associations, NGOs and other subjects is comparatively low. This kind of public management of IPR has brought about a lot of malpractices, causing the IPR policy to demonstrate deficiencies in law-regulation, transparency, responsivenes and other facets. Compared to the traditional model of management, global IPR governance manifests the following features:
• The government is not the sole source of power, thus different institutions including private sectors and social groups can also become centres of social power, and multi-centre mode of governance is advocated.

• It puts an emphasis on the co-action of government and society, and also blurs the dividing lines between public and private institutions and the responsibilities thereof. It no longer sustains the specificities and exclusivity of the government’s functions and it advocates the interdependence between government and social organizations.

• It promotes the participation of the management object, in the hope that a network would come to exist within the global political system, invigorating the organization and autonomy traits within the system.

• As to the means of governance, the government should quit relying on wielding its monopoly of power and should actively develop new management tools so as to improve the efficiency of management continuously.  

Although there is a considerable gap between present state of IPR governance and the ideal state of good governance, for instance, there are comparatively obvious defects in aspects such as transparency, accountability, efficiency, legitimacy and responsiveness, the global IPR governance is gradually evolving towards good governance, owing to the participation of non-state actors and governance features such as consultation on the basis of equality.

A Change in the Structure of Global IPR Governance: From Single to Multiple Subjects

The global IPR governance mode brings down the traditional mode of monadic participation, in which the types and quantity of participant have seriously developed, besides government, including international organizations, NGOs and other private sectors. In comparison with the former simplex subject structure (i.e. the sole participant is the government of sovereign state), in the background of global governance a structure of multiple subjects has emerged. As David Held said:

“The new non-state actors—transnational corporations, inter-governmental organizations, NGO and other types of organizations, are affecting government’s decision-making and relations between states through all kinds of approaches. The activities of the UN, the WTO and various governments are the key factors of global governance, but not at all the sole factor: global governance should include NGO and regional political organizations, and only then would the form and motive power of global governance receive their proper interpretation.”

Global governance shows how governments, social organizations, private departments, international organizations and other governing bodies wield common rule in global affairs by means of negotiations, consultations, discussions and other forms of interaction.

The system of global IPR governance is established not only by official institutions such as governmental organizations, but also is possibly developed and implemented by various networks, alliances and informal institutions. The global IPR governance body includes each country's government and its departments (such as the UK Intellectual Property Committee), international organizations (such as the World Intellectual Property Organization, International Anti-Counterfeiting Coalition and etc.), private departments (normally this refers to transnational corporations), industrial associations (such as the USA Business Software Alliance, Pharmaceutical manufacturers and other guilds) and their alliances with transnational corporations, chambers of commerce (such as the American Chamber of Commerce, the Japanese Chamber of Commerce etc.), IPR services (such as the Intellectual Property Department of the American Bar Association), NGOs and others. The Global IPR governance represents multiple subjects that engage in a reciprocal process of interaction and mutual restraint. Based on negotiations and consultations, their main bodies manifest a tendency towards diversification and multiplicity, including these three types: government, business enterprise and society group. It involves the benefit game and strategy selection of national, regional, transnational corporations, transnational corporations and industry associations.

Many countries are currently trying to employ multi-variant governance models. For example, the European Patent Office, coping with the current status of the patent system failure, puts forward four programmes referring to the patent system in 2025: market-oriented grey programme, state-oriented red programme, society-oriented green programme and technology-oriented blue programme.  

None of these
programmes can take effect by itself, but a synergy can be formed through the intertwining, interacting, mutual constraining, and mutual complementing of market, government, society and technology. Currently, the main body of society attracts great attention increasingly, due to its role in IP Management; the NGOs continue to bring into their irreplaceable functions, for example, Doctors Without Borders (or MSF), the Greenpeace Organization and other NGOs have played a conspicuous role in the supply of IPR public products. By dint of their voluntary, highly specialized and high-quality services NGOs exert their influence on government’s decision-making. When the Greenpeace Organization inspected the Chinese baby food market, they found that Heinz rice contained illegal components of genetically modified rice that had not passed safety control. Through the efforts of this organization, the issue of whether China was planting genetically modified rice became an issue attracting great public attention. Apart from that, during the Fifth Council of Ministers of the WTO held in 2003 in Cancun, Mexico, NGOs had a broad participation and actively developed diplomatic activities for helping poor countries. Meanwhile some NGOs even attended the meeting as national delegations on behalf of their countries. NGOs’ highly effective activities brought about a change in the power structure of global political stage. Government is no longer the sole source of power in global IPR governance: private departments and NGOs have their share in the distribution and operation of power and also influence government decision-making.

**Foundations of Multiple Participants**

The theory of public choice maintains that the role of civil society must be paid attention to, the reasons of which lie in that the government and the market are basically the same: both are liable to take on failure phenomenon. On one hand, there is market failure. Market mechanisms play an indispensable role in the creation, application, management and protection of IPR; these mechanisms, however, are not omnipotent. “The market cannot at all supply all goods and services which the society needs, or is perhaps employing a mode which influences negatively the whole society. The very market mechanism is not self-sufficient to fulfil all economic functions.” The phenomenon of market failure in the global IPR field manifests mainly in the following aspects:

- **Abuse of market monopoly position:** IPR is *per se* a kind of exclusive right and monopolistic right. That is to say, IPR is statutory monopolistic right and its monopoly is not illegal by itself. However, if this monopoly once oversteps certain limitations, it might possibly damage the public interest. In market management activities, such legitimised monopoly power might be abused, wherefore it might restrict or impede normal market competition, and in the long run, it might harm others’ interests, or common public interest.

- **Alienation of IPR protection objective:** Initially as a tool to encourage creativity, monopoly alienates itself to a tool for obstruction of competition. Transnational corporations view IPR as a kind of market competition strategy. They make commercial arrangements by playing cat and mouse, by malicious purchases of IPR, by accumulation of rubbish patent, by malevolent binding of technical standards, by deliberate abuse of infringement warnings, by IPR suppression lawsuits and other such measures. In this way, they alienate the IPR’s objectives, turning them into agents for impeding technology innovations, resource-wasting, obstructing technology utilization.

- **Imperfection of the market:** The so-called market imperfection implies that the market is not in a state of perfect competition. Owing to various economic development levels, laws, policies, resources etc., the transnational corporations have a greater imperfection on the global market. Generally speaking, transnational corporations possess a higher level of knowledge, and they have a higher consciousness of IPR ownership and richer experience in management. Under the condition of market imperfection, there exists information asymmetry between the purchaser and the seller in the market, and technology is short of rational pricing mechanism. These factors embarrass the technical product price to reflect the real market supply and demand. This springs from the deficiencies of the market itself, consequentially it is difficult to make improvements while relying on the market itself. The existing phenomenon of market failure demonstrates clearly that the effective supply of intellectual property products cannot rely solely on the market, and other forces must intervene.
On the other hand, there is failure of the government’s decision-making. Western scholars believe that government intervention can effectively make up for market failures. In fact, market failure cannot provide sufficient grounds for government’s intervention at all, because government itself is fraught with its own failures. The things which the market cannot achieve cannot necessarily be done better by the government. As reflected in the IPR field, the phenomenon of government failure is shown mainly in the following aspects: (1) Low-efficiency management: Low-efficiency management is a common problem of all governments. Take USA as an example. Heavy stockpile of patent applications and other issues call for urgent reform of the government monopoly system, (2) Lack of decision information: Due to lack of funds, shortage of talents, supervision by superiors, and the inflexibility of the very bureaucratic system and other aspects, the IPR decision information presents a tendency of inadequacy. Therefore the government lacks sufficient information for decision-making, (3) Public policy failure: When the government sets down its IPR policy, the policy supply could be influenced by various interest groups, and the policy outputs would reflect the predilections of those interest groups, neglecting the public interests, which would lead to failure of public policy, (4) Rent-seeking and corruption: According to Buchanan's argument, the sphere and domain of rent-seeking activities are interrelated with the government’s economic activities, also related with the relative size of the state-owned sector. Government’s interference in the domain of IPR could equally engender rent-seeking and corruption. In the sphere of financial policy, tax policy, governmental procuring policy and other public policies, which are closely related with IPR, chances are that some enterprises—in the process of striving to gain the political support of government officials—would acquire more profitable resources than other enterprises, through rent-seeking activities.

Role Orientation of Multiple Subjects

In the field of IPR, the coexistence of market failure and government failure makes it imperative to seek other paths for efficient governance. Following the rise of global civil society, some scholars have advocated the introduction of social intermediary organizations to compensate for the dual defects of the government and the market. Nonetheless, the position of the global IPR governance participants is discrepant. The national governments and the WTO are the most important actors in the international economic order and the most considerable controllers in global governance. Even if the global IPR governing body displays pluralistic development tendency, the determining position of sovereign governments cannot be shattered: they are still the only institutions which can legally employ their power to achieve various social objectives and guarantee that various protocols are effective, thus remaining the principal policy-makers. Although at present non-governmental circles imply a strong propulsive force to reform, and compared with before, various social power subjects have obviously increased in number, the unique monopolistic power which the government possesses still remains unassailable. Professor Yu Keping said: “Undoubtedly the government still has the preponderant importance... The legitimate government representing the State is, as before, the legislator of official rules. The state is still the most important political agent in the national and international society, assuming a foremost position. In the socio-political process and public governance the state is still holding the key position.” The WTO is an important place for every country’s mutual consultations and negotiations; according to the principle of state consent, after the consultations and negotiations of sovereign states, it ratifies and amends the international rules binding for each member-country and supervises their implementation. Moreover, it can settle international disputes via its vigorous Dispute Settlement System.

Other organizations and pressure groups like enterprises and industrial associations, NGOs, etc., exert significant influence on transnational IPR rules and the international authority system and influence government decision-making and policy implementation. Various organizations of common benefit or ideal pursuit have formed a policy network and have altered the structure of monopolistic participation of the governments in the traditional IPR sphere; Pirate Parties International is a suitable example. Created in 2006, this league consists of pirate parties from many countries, whose purpose is to help to establish, support and promote, and maintain communication and co-operation between pirate parties around the world. The league made its first appearance in Sweden, whose political programme included reform of copyright laws,
abolition of patents, respect for privacy; it considered that the antiquated copyright system must be reformed in the present Internet era. The league took part in the elections for European Parliament and gained 7.1% of the votes, whereby it successfully won a seat in European Parliament. Its claim gradually spread throughout Europe and other countries, and 19 countries have already set up a Piracy Party. The social life of the pirate parties in Belgium, Austria, France and Spain and other countries is extremely active and they have formed national pirate party alliances. These national and international leagues of pirate parties represent an even larger international movement; after 2006 in USA, Germany and France, such pirate parties were successively established, and through participation in the elections or by broad public participation they came to influence the copyright policy of the state, and made it possible that the new copyright system should rebalance private and public interests, the interests of copyright owners and those of the users; they are making efforts to share information and resources in the Age of Internet. Various pressure groups exert their influence on the national reform policies, while at the same time international alliances strengthen their political influence, and in the end this could influence the reformation of global IPR rules. Private sector actors, NGOs and other such social groups demonstrate an ever-growing vitality in the domains of formation, maintenance, and transformation of the IPR order, which manifests itself in their competition and cooperation with the government. This kind of competition and cooperation is de facto the process of interest aggregation, integration, expression and effectuation.

How to Realize the Structures’ Function in Global IPR Governance?

There is no doubt that the multiple-subjects in global IPR governance include sovereignties, which are the main decision-makers and performers of IPR international rules. Without them, there is no governance at all. But other non-state actors are also very active and effective in making and enforcing of such rules. They realize their own function at the following three levels:

System Level

The system functions act out through maintenance and adaptation. Maintenance denotes the relative stability and predictability of the system rules; adaptation denotes that the system changes its structure and behaviour to adapt to challenges and opportunities arisen in new environment and to reduce transaction costs. Almond believes that there are three major factors making up the system’s function: (a) political socialization, (b) political recruitment and (c) political communication. The functions of the system are carried out through political socialization, recruitment and communication. The political socialization means the process of handing around political values, political skills, attitudes and beliefs to citizen and political elite, which is also the process of system culture transmission. The system culture impacts the political choice of the system. The global IPR governance aspires towards the observance of human rights, fairness and justice, and such value pursuit influences the development and implementation of the global IPR rules. The negotiations among developed countries in the process of TRIPS Agreement can be taken as an example: one of their focus points is the issue of patent exception. While the US laws allow the existence of patent on life, European countries—for religious and moral reasons—refuse to ratify such a patent. The negotiations resulted in that the TRIPS Agreement, which allows the granting of life patent to microorganisms, according to the 1974 European Patent Agreement, but refuses to grant this patent to other living organisms, on the strength of which microorganisms, non-biological and microbiological forms are under patent protection but higher life forms are not.

In political recruitment (personnel selection through various methods to play diverse roles in the political structure) there might occur structural differentiation, its purpose being to make the group strong enough to achieve certain goals and establish new roles and structures, as well as to cause the existing structures to re-adapt to new circumstances. If we take the USA for instance, the US executive department organized the Advisory Committee on Trade Negotiations (ACTN, in 1988 its name was changed to Trade Policy and Negotiations Advisory Board) to inquire viewpoints regarding trade policy from private departments. The President appointed his institutional affiliations, for example, the CEO of the prominent international US Pfizer Company, Edmund Pratt, became the President of ACTN in 1981. With the globalization process, as there was uncertainty with multiple agreements securing IPR, the private
departments, which resorted to main industrial associations to protect and improve their competitive position at an early stage, began to endeavour to cooperate with the government in order to enhance global protection of IPR. In order to constitute international IPR protection, the US private sector developed the Intellectual Property Committee embracing twelve international companies (Pfizer included). The Intellectual Property Committee, through the Trade Negotiations Advisory Committee, induces the rise in its private interests to turn into national interests, and it accomplishes that at international level by employing the coercive force of the State. The changes and collaboration of the structures of the public and private sectors push the expression of private interests to achieve institutionalized channels.  

The interest groups that have common interest pursuit originate a policy network, through formal and informal channels of communication, by sales talks, campaigns, mobilization of public participation, political donations, judicial proceedings and other methods, draw closer to the government and the Parliament, so as to gain influence on their decision-making. Griffith and Freeman use iron triangle and whirlpool as metaphor describing the relationships between interest groups, the government and the Parliament formed through frequent exchanges. To an interest group, its degree of organization, its leader’s charisma, its financial strength, its cohesiveness and other factors, are in positive correlation with its effectiveness to influence the government’s decision-making. In the formulation process of the TRIPS Agreement, actors from US private-sector possessing formidable economic power directly influenced government decision-making by supplying the government with information, professional knowledge and canvassing activity; they also influenced the government’s decision-making indirectly, by means of donations and similar political behaviour. In the domain of IPR, government decision-making depends on large-scale multinational companies and industrial associations to provide potentially useful IPR information on international scale, including detailed information about foreign governments’ inability to procure adequate IPR protection, damaging assessment information influenced by foreign copyright infringement etc. Among these, the most distinguished is the International Intellectual Property Alliance; every year this Alliance provides loss data to the Representative Office of the US Trade Negotiations, and gives recommendations for the ordinary watch list and the priority watch list. On account of the influence of private interests, the information provided by IPR interest groups contains distortion and filtering; and the extent of company loss is exaggerated. The results, as expected by the private sector, are that the US gradually responded to the IPR lobbying, and intensified the relations between IPR protection and trade, through the Trade Bill amendments of 1979, 1984 and 1988.

**Procedure Level**

From the raising of issues to the establishment of the agenda, from the establishment of policies to their implementation, the TRIPS Agreement is under the influence and push of non-state actors as transnational enterprises represented chiefly by US high-tech companies and their industrial associations. And in the post-TRIPS age, the role of NGOs’ influence over the international IPR rules is rather conspicuous, which seek public interest such as basic human right and public healthy. Non-state actors form the expression and integration of active interest and influence making and implementing process of international IPR rules.

**Interest Expression and Interest Aggregation**

In order to express their interest requirements to the government, the interest-related actors—including private operative sectors and industrial associations—employ public communication, political parties, legislative organs and other official channels, as well as other means such as lobbying, persuasion etc. Besides the above-mentioned regular channels of approach, coercive channels such as going on strike or working obstruction or even illegal assassination and terrorism, are also means for interest expression. Interest groups are significant moving force that brought about the existence and formulation of the TRIPS Agreement. In the GATT round negotiations in Uruguay, private enterprises vastly influenced the issues and the process of negotiations; the proceedings on new issues such as investments, service trade and IPR protection, were all prompted by private organizations such as some US commercial organizations. Private actors pointed out that worldwide IPR infringement caused them to suffer huge economic losses. They suggested promoting higher level of international IPR protection to
safeguard their own economic interests. The representative of US high and new technology—Pfizer Pharmaceutical Company, and the IBM Corporation constantly lobbied the government and required that severe punishments should be imposed on international IPR violators, with the former being concerned about drug patent protection, and the latter being preoccupied with copyright protection of computer software. Forced by pressure from the private sector, in 1983 President Reagan promised to keep a high-level USA Technology in the 21st century. While the American Chemical Association and the Pharmaceutical Research and Manufacturers of America enjoyed the protection of patent and trade secret, copyright industry also required more robust protection. They used data to prove that foreign piracy usurped their copyright royalty and insisted on a commerce-based form of IPR protection.

The conversion of various requirements into major policy choice is called interest aggregation. Interest aggregation can concentrate dispersed interests and resources so as to link them to the establishment of an authoritative policy. If interest expression is to become a policy issue whereby rising to a real political choice, it should gain the support of a number of political resources within the system; this support springs from votes of citizens, tax revenue, professional and technical information, political donations and even military forces. IPR interest groups directly participate in or influence the choice of IPR policy issues. They not only influence the government's public decision-making through lobbying, but also take advantage of the information supply,—possibly include highly-skilled negotiations and adept lobbying work. Indubitably, the expression of interest and integration in a country’s internal IPR pressure groups does not necessarily lead to changes in the global IPR rules; however, the United States takes advantage of the Generalized System of Preference (GSP) policy of the carrot and the stick, in combination with 301 clauses as a bargaining chip, which presses developing countries to compromise.

**Policy Formulation and Policy Implementation**

By means of interest expression and integration, decision-makers transform effective political demands into authoritative policies. Among interest groups, by dint of national alliances and international linkage, new orders of global IPR are promoted, which are beneficial to the groups’ own interest. As an extremely important international treaty in the area of IPR, the TRIPS Agreement's decision-making process was a process of ultimately achieved balance of power through the united action of multiple interest groups. Various interest subjects, in order to gain policies beneficial to their interest, conferred together, struggled with each other, and entered into compromise, which eventually brought about the establishment of the new rules of global IPR governance. There existed struggles and consultations both between developed and developing countries and within developed countries, thus the private departments and trade associations took advantage of lobbying and other means to carry out activities, and even set up transnational joint groups so as to influence the government's public policy. The private sector, comprising 12-countries multinational companies represented by the US,
lobbied the European and Japanese high-tech enterprises and their trade associations, essaying to establish a uniform, high standard defence mechanism of international IPR protection and incorporate it into the GATT negotiating agenda. In 1988 the American Intellectual Property Committee, the European industry, the Employers Alliance and Japan's Federal Economic Joint Union submitted separately a document named Basic Framework for Intellectual Property Provisions of GATT to their respective governments and the GATT Secretariat, which covered the minimum standards and mechanisms related thereto of the main areas of IPR protection, and was ultimately adopted by the TRIPS Agreement.18

Policy implementation is an interactive process among a number of stakeholders; due to different interest claims of the target groups that carry out policies, they could take a different course of action for the different policies, or promote or hinder the implementation of a given policy: it all depends on whether these are consistent with their interests and goals or not. As to public policies conducive to achieving the objectives of the group, interest groups generally will actively support and put forth effort to promote policy implementation; if the implementation of a certain policy is detrimental to their proper evolution, the interest groups can possibly adopt various ways to obstruct its implementation. In this dynamic game process, the results of the actions of interest groups had an immediate impact on the implementation effect of the IPR public policies. After the adoption of the TRIPS Agreement, the strategies of different interest groups are varied.

As the TRIPS Agreement to a very great extent reflects the interests of developed countries, multinational enterprises represented by high-tech industry make effort to protect and defend the TRIPS Agreement, hoping to put into effect a comparatively high level of IPR protection of such industries; at the same time the Health Action International (HAI), the Consumer Project on Technology (CPT) and other NGOs, united themselves to oppose the strict protection standard of IPR on the basis of human rights, safety and public health, fairness and other public interest objectives, so as to counteract and cut the claws of the TRIPS Agreement. Grass-root activists opposed the biological piracy activities of the developed nations towards the public resources and traditional knowledge of the developing countries: the cooperation between India and other developing countries, and international NGOs, caused the developed countries to retrieve to them the infringed patent of turmeric and chinaberry in India and other similar patents. Apart from this, it also embodied the game-playing between South and North respecting the struggle of biological diversity. On account of having a rich traditional knowledge and genetic resources, the developing countries consider that Convention on Biological Diversity should have priority to the TRIPS Agreement. The former believed the living resources are the resources of national sovereignty and promoted the attainment of traditional knowledge acquisition and benefit-sharing system; whereas the latter held the idea that IPR had exceeded this sovereignty of resources, and laid emphasis on the protection of private rights, i.e. patent protection. Southern and Northern countries, as well as among international NGOs, because of differing views on the issue of agricultural products, caused the minister-level conference in 1999 in Seattle to produce little effect.15 In the context of global warming, NGO participated actively in the Copenhagen conference on global climate, discussing how to make use of compulsory licensing system of the TRIPS Agreement, to transfer and popularise counsels and suggestions on green technology.

Policy Level

The functions of policy level are made manifest in four aspects: extraction, distribution, control and symbolism. These functions include resource extraction by means of tax revenues and other forms, distribution of benefits and services among various groups of the population, various forms of behaviour control as well as real actions in symbolic aspects. Generally speaking, the policy functions of extraction, distribution, control and symbolism are frequently intertwined and are not entirely different.

The function of extraction: As a rule in the international IPR rules, it is manifested in grabbing resources through economy and trade. In the new order of international politics and economy, powerful countries often impose on weak or less affluent countries terms of trade, resulting in the flow of resources from the weak to the powerful states. International IPR rules, contained mainly in the TRIPS Agreement and a series of regional agreements ensuing thereafter (also known as TRIPS-plus agreements), reveal how the USA and other IPR powers, leaning on their superiority in the global
economic market, impose the will of their own nation or that of a restricted number of other nations, on the underdeveloped nations. Through the formulation of international IPR rules the developed countries impose terms of trade suiting their own interests, onto the developing countries; in this manner they extract a great deal of resources from the developing countries. The adoption and implementation of the TRIPS Agreement and TRIPS-plus agreements bring a wealth of income to the developed countries. According to WIPO statistics, the successfully achieved volumes of trade by the developed countries through licensed trade—mainly by patented technologies—were 11 billion USD in 1965, 50 billion USD in 1985, which increased to 250 billion USD in 1995.19

The function of distribution: According to Easton’s view, public policy is an authoritative allocation of values.1 At any time the public policy reflects the interests of the groups which are dominant in aspects such as cohesion, degree of organization, financial capability, etc. Ever since the TRIPS Agreement became a main part of the WTO, the constraint role played by the IPR on trade agreements has always possessed a highly controversial nature. Economists denounced the WTO for adopting the TRIPS Agreement and IPR; the TRIPS Agreement promoted and achieved a high level of IPR development in the developing countries, but it is not at all suitable for the development need of those countries: the distribution of IPR benefits between the North and the South is not well-balanced at all. The former chairman of the World Bank Trade Department made a special estimation of the cost to developing countries for the fulfilment of their obligations under the TRIPS Agreement: it amounted to 60 billion US dollars per year, which drastically exceeded the profits they expected to achieve in the broad market from Uruguay round agriculture and textile trading.20

The function of control: Control is a commonly used policy tool with a diversity of forms: material provisions or money rewards, persuasion or moral censure. Control is exercised by means of laws or policies. For example, in its foreign trade policy for controlling international cargo trading, the government employs tariff and non-tariff measures as concrete regulatory means. In international policy output, some countries might assume a definitive controlling behaviour so as to coerce other countries to take actions which the former desire and also impose certain sanctions or inducements: norm inducements such as ideologies and diplomatic negotiations, or economic inducements such as commercial aid. For instance, in Sino-US IPR negotiations, the US Representatives accused China of dealing in piracy, and condemned China of immoral behaviour in order to gain dominant position in the negotiation. Moreover, the USA threatened China with trade retaliation. On the basis of its Decree No. 12951, the USA used the discontinuation of bilateral scientific and technological cooperation as a bargaining chip in the negotiations. In 1996, China was included into the priority watch list of 301 special items, and it was announced that 100% punitive tariffs would be imposed on dozens of categories of Chinese export commodities.21 And a series of actions undertaken for compulsory licensing regime of medicaments in the developing countries and NGOs, were aimed at securely reducing the negative externality of IPR and attempting to put under control the pharmaceutical domain.

The function of symbolism: Symbolism indicates that policy does not deal in fund input and lacks substantive or procedural regulations; it is devoid of mandatory penalties and sometimes preaches and affirms merely given value orientations or spiritual advocacy, such as patriotism, respect for human rights, encouragement for innovation, fairness and justice, and other value outlooks. In the IPR management area, the TRIPS Agreement and TRIPS-plus agreements brings about in NGOs deep suspicion regarding the economic, political and moral lawfulness of those agreements, respecting the following aspects: public health, human rights, biodiversity and plant genetic resources. As the TRIPS Agreement places commercial values higher than the basic human rights, and considers the interests of right holders superior to the interests of other users and other such tendencies, a symbolic policy often arises in the process of reflection and evaluation of the TRIPS Agreement, and is manifested mainly in the field of global human rights and public health systems—through policy proposals and changes—centred on basic human rights such as the right to health. For example, in 2001 the United Nations Economic and Social Council through a resolution pointed out the negative impact of the TRIPS Agreement on the right to health, right to food and the right to self-determination; the Council further required that, all sovereign governments should note
that the international commitments they assumed in accordance with the international law must have precedence over economic policies and international trade agreements. These international organizations are in search of new policies, including new interpretation of existing agreements, the creation of new non-coercive soft laws, such as declarations, guidelines, proposals and constitutions for safeguarding basic human rights such as public health, etc.

**Conclusion**

In a world, non-state actors are advocates, supervisors, evaluators and critics in the political system of global IPR. The non-state actors especially the NGOs seeking public interest have shown their brilliant power in the IPR international system, they put forward the IPR agenda, push the IPR rules to be made, and promote or hinder them to be enforced, and drive them to be adjusted to fit for the changed circumstance. They have affected the IPR global system, both positively and negatively. And they have to be promoted for better and effective function because of their inherent defects.

**Reflection and Evaluation**

Global IPR governance has a positive meaning both theoretically and practically, which have raised the transparency, legitimacy and responsiveness of IPR global system. From practical standpoint, the global system of IPR is a political system, and the adjustment and change in internal structures enable this system to adapt to the environment changes brought about by globalisation. With the advancement of globalization, the issues of global IPR governance assumes an increasing global nature, and impels international society to exert joint efforts in order to solve problems generated within them, and global IPR governance complies with the objective requirements of historical development. The dialogues and agreements between legally equal entities are emphasized in global IPR governance, which, to a certain extent, can restrict hegemonism. Owing to the existence of various participants, the establishment and implementation of national and international rules of IPR became increasingly transparent, accountable and responsive. From a theoretical perspective, the global IPR governance discomfits the dichotomous thinking mode of traditional civil and private departments. Non-state actors’ participation and interaction enable the subjects of the IPR system to display a tendency toward diversification, and multiple subjects, acting together in the global IPR system, break down the relatively simple structural mode of sovereign state—international organizations in traditional decision-making of international IPR rules; they advocate the collaboration among all subjects, promote the participation of social subjects, respect the authority of civil society, and view the global civil society as a source of decision-making authority. These notions about relationship between politics and state, as well as other scientific theories, definitely have a great contribution.

However, the global IPR governance, now in the process of growth, is never a perfect work without blemish. The Post-Washington Consensus argues that the actions of social subjects in the global governance should be paid close attention to and be promoted, so that social subjects can get involved in providing IPR goods as a third way, besides government and market. However, in the supply system of IPR public goods like institutions, social subjects are merely a limited compensation, not substitute. The reasons are: First, there is voluntary failure. Being short of fund, personnel, information, and professional skills, etc., IPR NGOs can not always play an effective role as they wish. Without enough resources, their actions are restricted often. Sometimes they have to abandon the issues they are most interested in.

Second, the defects such as hegemonism in global IPR governance, flaws in the efficiency and authoritativeness of global governance institutions etc., place some IPR services outside the power of IPR NGOs. They are only supervisors, advocates and critics, never the decision-maker. They do not have the power to decide what to do or not to do, what should to be discussed or not to be discussed in official agenda.

Third, just as Merton has expected, the structure does not always produce positive and explicit functions. It might also have negative and latent functions. The structural changes in global IPR governance admittedly have triggered a rapid response from the decision-making system to the demands of IPR NGOs, effectuating policy adjustments (exemplified by the Doha Declaration); these changes also have inspired people the anxiety that national sovereignty is being eroded and national states are on the path to perdition. The rise of private sector in international affairs makes people feel that
private figures create public laws for the whole world. And all these cause people to reconsider the legitimacy of the global IPR System.

At last, the development of IPR NGOs pursuing for either industrious benefit or public interest confront with their own inherent dilemma, which will hinder their functions in affecting international IPR rules, which are shown as followed: their legality, legitimacy and representativeness are questioned by the international world; the unequal participation of different NGOs, especially when the NGOs in north countries and the NGOs in south countries are compared; it is hard for the NGOs to corporate with each other; controlled by the sponsors, the NGOs have little power to choose their topic and it is always difficult to ask the NGOs to take responsibility when some mistakes happens.

Apart from this, the global IPR governance advocates the cooperation and interaction among the multiple subjects. To be sure, such interaction between different subjects does exist. However, one must not ignore the various conflicts therein. Between the interests of IPR NGOs, private sector, international organizations and sovereign governments there are conflicts and perhaps even fundamental antagonism. These conflicts can be basically summarized as: the conflict between private benefit and public interests, the conflict between the interests of Southern and Northern countries. For the sake of public interest, such as food security, life safety and protection of human rights and the environment, IPR NGOs ally with governments of developing countries, to induce world organizations and international organizations to make policies in accordance with what they propose. However, by reasons of financial sources, organization cohesion etc., the success rate of such resistance is very low and very far from the perfect condition, whereas the pursuit of private sector is relatively simple: maximum of profit; the public interests are not their goals. They just want to obtain a huge economic payback. The conflict between the private sector and public interest specifically manifests itself in the conflict between obligees and users. As for the struggle between the IPR interest of developed and developing countries, —from beginning to end it penetrates the entire process of the TRIPS Agreement: from the setting of the themes to the agenda enactment, from the discussing of various programmes to their ratification, from decision to implementation.

Although there are numerous inadequacies in the global IPR governance, global governance is still a mechanism of negotiations and consultations of multiple subjects; each subject can vie for resources in competition and compromise. In the benefit game of all parties, the global IPR system can maintain a dynamic and relative equilibrium, owing to its structural readjustment and functional realisation. The participation of the NGOs is more in the international IPR rules.

The Way towards Good Governance

Good governance is the optimum state of the governance and maximizes the social goods, whose characteristics include legitimacy, transparency, accountability, responsiveness, efficiency, participation, integrity, justice etc. International organizations and sovereign national government are the most important subjects in global governance, but the participation of non-state actors especially NGO and the formation of optimal interaction between them and international organizations and sovereign governments facilitates promoting of good governance in the global IPR sphere. The participation of transnational IPR NGOs has already produced effects on two fronts:

First, it improves the responsiveness of the IPR system. Because of the requirements raised by NGOs in combined actions with the developing countries, the international IPR rules introduced relevant adjustments and changes, and adopted new policies, for example, the Doha Declaration in 2001, effectuated changes in policies, like the first amendment of the TRIPS Agreement in 2005, and the issues neglected in previous international treaties on IPR were included in the negotiations agenda, like the presently negotiated traditional knowledge acquisition and international conventions on benefit-sharing.

Second, it strengthens the legality of global IPR rules. Transnational NGOs pursue public interests such as public health, life security and other basic human rights. Also, they are concerned about the burden sharing between Southern and Northern countries, caused by the climate changes, and other justice problems. Their participations have enhanced the legality of the international rules of IPR. This legality is manifested in two aspects: (1) international rules are developed and implemented through legal proceedings, which render them legal; (2) as it has won certain interests for the developing
countries, bringing about kind of equilibrium of interest between the North and the South, thus it is capable of captivating people’s heartfelt approbation and deference. The consultative position and amicus curiae status of IPR NGOs in the WTO allowed them to become consultant, advisor, estimator and monitor in the system of global IPR governance.

Naturally, there exists a great gap between reality and the goals pursued by the global system of IPR, like legality, responsiveness, integrity, justice, etc., the firmly established consultative position and the amicus curiae status of NGO in the WTO played a role only on the international arena of IPR, providing for them a platform, and this is only their well established legal status in international affairs, in their participation in international organizations—, and it is the first step in a long way to go. They need to carry their activities further, and they have to obey the following paths:

External strategy: The NGOs must offer more counsel and technical professional guidance to the developing countries, so as to ensure that national government officials become aware of discussion and development issues in multilateral institutions; among the NGOs there should exist communication and coordination; congruity respecting issues of concern should be brought to a higher level, in order to avoid duplication of results, by unifying policy positions when necessary; the NGOs should assist the interest groups in underdeveloped countries to improve their IPR abilities, so as to promote the creation, utilisation, protection and management of IPR; they must engage more amply in extensional activities such as regional advisories and open sessions, through conscientious investigation, making their standpoint and proposals more well-grounded; they must win over donors' commitment to support the long-term projects, so as to solve the funding predicament.

Internal strategy: They must make clear the interests of their own body; to ensure their transparency, these NGOs should disclose relevant information, such as expressing clearly their legal status, opening the source of funds, opening the decision-making and reporting procedures, in order to improve external supervision; they can use ample evidence to prove they can offer valuable assistance to international investigations and consultations, such as science and technology expertise; they can make public previous accomplishments, and explain how to supervise the precision and effectiveness of their own suggestions and back up the establishing of a system of accountability; at last, they can point out the relationship between themselves and governmental or local policy decision procedures.25

Through the above-mentioned twofold tactics NGOs can solve their predicament when taking part in IPR international affairs, and also enhance their lawfulness, political legitimacy and representativeness, and hence lend an impetus to the realization of IPR good governance.

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