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Event / Press availability: March 22, 9am EDT / 1pm UTC Register to join: https://tinyurl.com/March22TRIPSWaiver

PIJIP Press Release 3.22.21: https://tinyurl.com/v4tmjw8w

Press Statements and Contacts (statements + contact info): https://tinyurl.com/PressContactsTRIPS

Participants TRIPS Waiver Press Conference March 22 https://tinyurl.com/ParticipantsTRIPSMarch22

International Research Organizations Support WTO TRIPS Waiver for COVID-19

Over 250 organizations and prominent researchers and experts, representing millions of researchers, educators, libraries, and support organizations globally, call for reduction of copyright barriers to COVID-19 prevention, containment and treatment


Washington, DC -- For the first time today, research and education organizations around the world are joining the call for the World Trade Organization (WTO) to temporarily suspend its rules on intellectual property where needed to support the prevention, containment and treatment of COVID-19. Their statement, released today, calls particular attention to the need to include copyright rules within the waiver. Supporters of the Statement are holding an online public event and press conference Monday March 22, 9am EDT / 1pm UTC (Register to join). PIJIP is sponsoring this event as part of a program of activities exploring the human right to research and its application in international copyright law and policy, supported by the Arcadia Fund’s Open Access Program.

Leaders in education, research and copyright
Over 100 organizations and more than 150 international academics and other experts are releasing the statement, which is being delivered to the World Trade Organization today. The signatories include the largest library and education federations in the world: Education International, representing over 30 million teachers
globally; and the International Federation of Library Associations and Institutions (IFLA), which represents over 1,500 library and research institutions in over 150 countries.

Individual signatories include leading international health researchers, including Jorge Bermudez, Head of Department of Policies for Pharmaceutical Drugs and Assistance (NAF) of the National School of Public Health (Ensp/Fiocruz) in Brazil; Joel Lexchin, MD, University of Toronto, author of over 140 peer-reviewed papers on pharmaceutical policy; John Willinsky of Stanford University, a leading scholar and proponent of open access research. The statement is endorsed by leading copyright and intellectual property academics, including Peter Jaszi and Pat Aufderheide of American University, authors of *Reclaiming Fair Use*; Caroline Ncube, the DST/NRF SARChI Research Chair in Intellectual Property, Innovation and Development at University of Cape Town and author of *Science, Technology & Innovation and Intellectual Property: Leveraging Openness for Sustainable Development in Africa*; and Madhavi Sunder, Professor of Law at Georgetown University Law Center and author of *From Goods to a Good Life: Intellectual Property and Social Justice*.

The need for copyright rules that support the prevention, containment and treatment of COVID

The statement points to "deep inequalities in access to knowledge" that have been "aggravated" by COVID-19:

“In some countries with flexible copyright systems, residents are able to access and use essential materials in remote educational, learning and research activities, virtually access and use the collections of libraries and other institutions, and contribute to research on treatments using advanced processes such as text and data mining. But these activities are not taking place everywhere because they are not lawful everywhere.”

The statement points to two ways that access to copyrighted works is needed to support responses to COVID-19:

**Access to copyrighted works is needed for COVID-19 prevention and containment by enabling access to schools, libraries, and other essential institutions from users’ homes.** “In too many countries, copyright laws do not enable remote digital uses of works for essential activities,” the Statement explains. Many countries’ copyright laws do not allow researchers, academics or libraries to access and use essential materials for remote education and research, obliging them either to run the risk of travelling, or to suspend their work.

**Access to copyrighted works may be necessary for developing COVID-19 treatments.** “In too many countries, researchers lack the rights they need to use the most advanced research methodologies, such as text and data mining, to help find and develop treatments to COVID-19,” the Statement explains.

According to Sean Flynn, Director of American University’s Program on Information Justice and Intellectual Property and an organizer of the statement:

“The needs for intellectual property policy to accommodate emergency measures to prevent and treat COVID-19 is not limited to patent law. Preventing the spread of the pandemic requires taking research and learning online. The discovery, development, and utilization of treatments for COVID-19 requires high technology uses such as text and data mining, artificial intelligence and reverse engineering of software. We need urgent emergency alteration of intellectual property rules, including copyright, to enable the full global effort required to defeat the virus.”
Catherine Stihler, CEO, of Creative Commons, explained:

“The global health crisis triggered by the COVID-19 pandemic has highlighted the deep imbalances of the WTO’s intellectual property IP rules enshrined in the TRIPS agreement. At Creative Commons, we believe international copyright rules should not stand in the way of accessing and sharing knowledge to help fight the pandemic; instead they should provide equitable access and use of essential materials in remote educational, learning and research activities; virtual access and use of library collections; and research on treatments using advanced processes such as text and data mining. We also believe the international IP system should enable broad and early public access to medicines, treatments and vaccines. We thus call on WTO members to endorse the TRIPS waiver proposal and to act urgently to guide countries in addressing copyright barriers to access to knowledge to uphold fundamental rights and the public interest.”

Examples of practical uses of copyright in the prevention, containment and treatment of COVID-19
An artificial intelligence firm, relying on text and data mining of copyrighted sources including newspapers, first discovered the virus outbreak in January 2020.

Subsequently, researchers used text and data mining of scientific publications to aid vaccine research.

The German federal government held a hackathon called #WirVsVirus (“We against the virus”) where 42,000 people met to design the electronics and algorithms to develop an open-source lung ventilator.

All of these, and other, efforts to engage the world in a rapid and massive scale up of COVID-treatment reply on access to copyright, including to scientific writings, software, and designs.

Examples of copyright barriers to the prevention, containment and treatment of COVID-19
A temporary waiver of WTO rules on copyright will make it clear to all countries that they may adopt emergency measures to overcome copyright barriers to the prevention, containment of treatment of COVID. Such barriers are common in many restrictive copyright laws around the world.

Research
Copyright barriers can block needed research. A project by American University’s Program on Information Justice and Intellectual Property (PIJIP) is mapping the world’s copyright laws and their exceptions permitting research uses for advanced methodologies such as text and data mining and machine learning. Preliminary results of that project were presented to the World Intellectual Property Organization (WIPO) last year, showing that many countries fail to permit such methods. Professor Sean Flynn, PIJIPS’s Director, testified to WIPO:

“Only a minority of countries authorize sharing text and data mining databases between researchers needed for collaboration, including across borders. And a number of countries still provide only the mandatory minimum exception required by the Berne Convention for quotation -- in effect banning text and data mining uses.”

A member of PIJIPs research team, Lucie Guibault, Professor, Associate Director, Law and Technology Institute, Dalhousie University, Canada, explained:

“Copyright can create major obstacles to the pursuit of essential research endeavours and the emergence of solutions to the COVID-19 crisis. Without adequate limitations and exceptions to exclusive rights, copyright law can prevent the use of techniques, such as text and data mining and
machine learning, that are necessary to develop new treatments. The TRIPS waiver may help assure countries of their ability to urgently amend or temporarily waive copyright rules that are obstructing essential research methods for the common good."

Christophe Geiger, Professor of law at the University of Strasbourg, another PIJIP project member, further explained the relation of research rights to fundamental human rights, including in the EU:

"The right to research has a strong human rights foundation and is protected at the international, European and national level. Based on the right to information, it includes an active right to search for effective and objective information by the use of existing sources, which implies in the digital environment to be able to use lawfully text and data mining (TDM) techniques to conduct research. This is very problematic in the EU since the recently introduced TDM exceptions to copyright and related rights are designed in a too narrow manner and contain opt-out mechanisms that might endanger their efficiency and their harmonisation. This will lead to a significant competitive disadvantage for the EU when it comes to research and the development of artificial intelligence-based solutions to address many issues of public interest."

John Willinsky, Khosla Family Professor of Education, Stanford University, and Director of the Public Knowledge Project, which produces open source software in support of open access to research:

"In establishing just how productive and beneficial the free and open sharing of research and related discoveries can be, the concerted effort to make the science on COVID-19 as widely available as possible has had a remarkable global impact. Open science is alleviating suffering and saving lives. It is advancing research. Up to this point, the openness of pandemic-related research is largely the result of concerned researchers and responsible scholarly publishers responding to a health crisis of planetary dimensions. Now is the time for WTO to formally, if temporarily, suspend the applications of its rules on intellectual property when it comes to efforts at preventing, containing and treating COVID-19."

Tiago Lubiana, a Bioinformatics PhD candidate, at University of São Paulo, Brazil, described the practical difficulties of engaging in text and data mining research in Brazil:

"I work with biocuration of biomedical concepts, and use text and data mining in my work. Text and data mining research is needed because there is just too much published content on many subjects for any individual human to process through traditional reading. The use of open licenses and copyright permissions to use for research allows us, as researchers, to use machine learning to extract meaning from millions of articles. If a resource is not explicitly under an open license, I will not be able to use it properly in text mining projects, for fear of legal issues. Projects like Wikipedia and Wikidata and major life sciences resources, such as UniProt and the Gene Ontology, are limited in their impact by when sources are subject to unduly strong copyright. Copyright is a barrier to science in many countries with restrictive copyright laws; we cannot afford extra barriers in the fight against COVID-19."

Tel Amiel, UNESCO Chair in Distance Education, stated:

“Scientific information and educational resources related to the COVID-19 pandemic need to circulate in a timely and effective manner, and this can only be achieved if they are to be done openly without legal barriers and limitations. This must be so that communities and local actors can learn about and share prevention mechanisms and participate effectively in finding solutions to continuously emerging problems."
Anubha Sinha, of the Centre for Internet and Society (CIS), the leading non-profit organisation in India on internet and digital technologies, explained:

“While vaccine development has made considerable progress, tests are still underway to produce candidates for CoViD-19 treatment. In 2020, Chief Science Advisors of thirteen countries, including the US, UK, Japan, India, South Africa, and Brazil, emphasised the need for open access to published scientific articles to effectively contain the pandemic. Limited voluntary commitments to open access have been helpful, but huge disparities in the potential for research between countries persist, hurting the mission of global medical and scientific research. A 2020 study, for example, highlighted that only 25% of the world’s copyright laws permitted non-commercial text and data mining. The scenario requires a joint international solution that not only affirms TRIPS flexibilities, but also empowers countries to enact adequate laws removing copyright barriers in emergencies."

Annette Markham, Professor, Director, Digital Ethnography Research Centre, and a researcher specializing in frameworks for Internet research and data ethics, RMIT University, Melbourne, Australia

“Antiquated copyright laws restrict knowledge development in too many countries. COVID-19 is only one of many planetary crises that we need scientists to collectively tackle. We can't do this with the persistence of outdated copyright firewalls. Firewalls are built and reinforced by those who already have strong access. Unless you experience the crippling effects as a scientist on the ground, it is difficult to see why it’s a big deal. Open access and open science initiatives around the world have developed well-tested models for policies that are less restrictive. Key stakeholders around copyright laws can take action that secures people the right to accessing information that can help them benefit from, and participate in, scientific progress."

Repairing medical devices

Copyright can stand in the way of emergency repairs of medical equipment needed to treat COVID-19 that imbed software and other copyright protected elements. In recognition of this problem, the Critical Medical Infrastructure Right-to-Repair Act of 2020 introduced in the U.S. Senate and House of Representatives would temporarily suspend copyright and other restrictions blocking needed repairs of essential medical equipment, such as ventilators, during the COVID-19 pandemic. Senator Ron Wyden, of the Bill’s sponsors, explained:

“There is no excuse for leaving hospitals and patients stranded without necessary equipment during the most widespread pandemic to hit the U.S. in 100 years. It is just common sense to say that qualified technicians should be allowed to make emergency repairs or do preventative maintenance, and not have their hands tied by overly restrictive contracts and copyright laws, until this crisis is over.”

Online and distance activities

Many copyright exceptions impede online and distance activities needed during COVID. A recent study commissioned by the World Intellectual Property Organization, competed before the COVID-19 pandemic began, concluded that most laws around the world fail to permit educational uses for online teaching:

“Most national exceptions and limitations for teaching purposes fail to properly envision digital and online uses. Specific language tends to restrict exempted teaching uses to face-to-face and “analogue” scenarios (e.g. classrooms, performance, photocopying). This is particularly the case in Asia, Africa,
Latin America, Middle East and Eastern Europe. Most national copyright laws only benefit face-to-face teaching scenarios.”¹

Teresa Nobre, Vice President of COMMUNIA, an EU-based civil society organization with a focus on promoting rights to education, explained:

“School closures were adopted in more than 190 countries across the world as a non-pharmaceutical measure to contain the COVID-19 pandemic. In order to continue to provide remote learning during lockdowns, educators are adopting multiple remote delivery channels, such as online video platforms, messaging apps, clouds and email. Yet, a significant number of national copyright laws in all the continents lack the flexibility needed to permit education to be conducted through those digital and online means. We share the understanding that these laws cannot be deemed to have properly internalized the fundamental rights to freedom of information, freedom of science and education, and that governments should be encouraged to use their full authority to support education and other public interest activities that need to take place remotely during emergencies that fundamentally disrupt the normal organization of society.”

Denise Nicholson, Scholarly Horizons, South Africa (former scholarly communications librarian at the University of the Witwatersrand, Johannesburg, South Africa):

“COVID-19 highlighted the inadequacies and restrictions in South Africa’s copyright law that negatively affects access to information, knowledge sharing and the provision of relevant teaching and research materials. Overnight, e-learning platforms became the virtual classroom for schools and tertiary institutions. Teachers and lecturers needed to scan book chapters, articles, images and other teaching materials from personal and borrowed copies and upload them to password-protected e-learning platforms, but they quickly hit the copyright barrier. Access to e-books has been particularly problematic. Most books that are considered textbooks are simply not available for purchase in electronic format. Two South African textbook providers do not allow libraries to purchase e-books. They will only sell directly to individual lecturers or students. However, e-book prices in South Africa are unaffordable for most students.”

**Development of medical technologies**

It is widely recognized that global access to vaccines and treatments requires a massive scale up in production. Copyright can often stand in the way of this goal.

Francisco Rossi, director of the IFARMA Foundation, a non-profit research institute that focuses on medicines access, use and quality based in Bogota, Colombia, explained:

“When humanity is facing a global tragedy, scarcity is morally unacceptable. Copyrights produce scarcity of knowledge, scarcity of information, scarcity of collaboration and cooperation. Generic production obviously is blocked by patents and industrial secrets, but also is blocked by restrictions of knowledge dissemination, due to copyrights. There is a contradiction between the implications of IP incentives and the public interest, as it was stated by the UN Secretary General’s high level panel on IP and access to medicines before this pandemic. It is unbelievable that global leaders are insisting to put incentives over the public interest in the most visible emergency in centuries. There is only one market

¹ Ms. Monica Torres & Professor Raquel Xalabarder, Report on Practices and Challenges in Relation to Online Distance Education and Research Activities, SCCR/39/6, (Oct. 15, 2019), at 16.
where rentability is huge and prices are several times the costs of production. Luxury goods. Goods not for all, just for elites. It is unacceptable that a civilization apply the logic of luxury goods to this global tragedy.”

Brook Baker, Senior Policy Analyst, Global Health Access Project and Professor of Law, Northeastern University School of Law, explained:

"Access to copyrighted works, in addition to patents, industrial designs, regulatory data, and trade secrets, including manufacturing know-how, proprietary formulas, and biologic resources, is needed to prevent and contain COVID-19 and to develop treatments. Copyright protection on software, industrial blueprints, production manuals, and other creative works are increasingly embedded in diagnostic and other medical devices and in COVID-related digital-health technologies. Suspending such copyright protection can result in more immediate production of existing and new COVID health products."

James Love, Director, Knowledge Ecology International, who recently wrote on the crucial link between know-how and the scale up of production of vaccines, explained:

"During the pandemic, there have been copyright claims regarding 3D printing of medical devices, and library and school shutdowns that created an unanticipated need to rely upon online access to learning and research tools, under controlled digital lending systems. In each of these cases, copyright exceptions are quite important, including those appropriate for this type of emergency."

Navya Dasari, a current NYU Law student and Coordinating Committee member of Universities Allied for Essential Medicines, stated:

"The barriers to entry for developing COVID-19 treatments, vaccines, diagnostics, and other interventions include copyright law, which restricts access to information for scientists and public health researchers alike. As an organization of university students, we are deeply concerned with the ability of academics to access the information they need to innovate, and the ability of researchers to share their work and collaborate without restriction. In the interest of the university communities which have stepped up to this global challenge, we call for WTO member countries to prioritize public health and lift copyright barriers to COVID-19 research."

The impact of COVID on libraries role in promoting research and learning

Libraries play a crucial role in providing access to journal articles and other sources of information for scientific researchers. And they also provide services that help people learn, including during the pandemic. But many of their services by contract or law are only permitted to be delivered on the premises of their physical structures.

Dick Kawooya, Associate Professor, School of Information Science, University of South Carolina

"COVID-19 and the lockdown have meant that libraries were not available to the public to access print and digital services. Although all library resources are acquired and distributed legally, converting print resources would violate many copyright laws around the world. Likewise, transmitting copyright content in other formats such as reading a book aloud over Zoom would potentially infringe on the relevant copyright laws. Many libraries needed to do exactly that but could not avoid breaking the law."
Stephen Wyber, Manager, Policy and Advocacy, International Federation of Library Associations and Institutions

“Libraries of all types - both through their collections and their services - play a key role both in mitigating the impacts of the pandemic, and in accelerating efforts to bring it to an end. While definitively enabling them to carry out their missions across borders and in a digital world will require longer term international legal action, the situation faced today requires emergency measures in order to enable the interdisciplinary work needed to understand the pandemic in all its dimensions, and to enable the continuation of education, research and cultural participation”

The inadequacy of voluntary measures to respond to the crisis

Many publishers responded to the clear problems with contracts restricting online and digital uses of works by libraries and educational institutions with voluntary waiver of restrictive contract terms. But those waivers have been insufficient to meet the need.

Teresa Hackett, Copyright and Libraries Programme Manager, EIFL, explained:

“At the start of the lockdown in March 2020, the International Coalition of Library Consortia (ICOLC) requested publishers to temporarily lift certain licence restrictions for e-resources to facilitate the overnight shift to online teaching and learning. Many publishers responded, for example, by providing access to additional content and by making certain COVID-19-related content freely available. Some publishers lifted paywalls to their entire portfolios, while others waived restrictions on concurrent access or allowed remote access. However, over 40% of expanded access has already expired, and just two publishers waived relevant licence restrictions for the duration of the COVID crisis. As a result, access is inconsistent and unpredictable. The proposed TRIPS waiver would lift barriers to certain uses of copyright-protected content during the pandemic for education and other essential public interest purposes”.

The role of the TRIPS waiver in reducing threats under international law

Copyright is domestic, not international, law. But WTO rules create minimum standards that all copyright laws must comply with, under penalty of WTO dispute resolution and sanction. According to many experts, the WTO rules are creating hesitancy to take the immediate action required to waive copyright rules blocking activities needed to prevent, contain and treat COVID-19.

Peter K. Yu, Regents Professor of Law and Communication and Director, Center for Law and Intellectual Property, Texas A&M University, explained:

"Whether the focus is on remote education, software adaptation, text and data mining or machine learning, flexibilities in copyright law go hand in hand with other adjustments that we need to make to the intellectual property system to help combat COVID-19. The removal of pressure and constraints from the International trade regime will go a long way to helping countries maximize their policy space to develop appropriate pandemic responses that are sensitive to local conditions."

Luis Villarroel, Director, Corporación Innovarte, Chile (Former Vice Chair WIPO Copyright Standing Committee on Copyright and Related Rights)

“Intellectual property instruments recognize the power of countries to protect public order and public health, but this power is too frequently overlooked. The proposed TRIPS Waiver is a key instrument to
implement that inherent power. Its effect includes that countries can adopt copyright policies, including exceptions, limitations and compulsory licenses, to permit uses of copyright that are required for public health. Many countries, especially in Latin America, lack copyright exceptions and limitations to promote today’s public health. The TRIPS waiver is critical to assure that adopting copyright policies needed to save lives and health are not stopped by the fear of economic sanctions under WTO rules.”

Lia Holland, Fight for the Future:

“The United States’ punishing enforcement of intellectual property rules through trade threats has created a culture of fear that, even during a global pandemic, is interfering with our ability to save lives.”

The human rights demands to promote access to knowledge
Beatriz Busaniche, Presidente and Director of Fundación Via Libre, Intellectual Property and Human Rights Professor at FLACSO Argentina

“In international human rights doctrine, it is clear that the right to health, education and the right to enjoy the benefits of science take precedence over commercial interests and the intellectual property trade agenda. In a situation like the current one, interposing artificial barriers to the indispensable knowledge to fight the COVID-19 pandemic is blocking the exercise of human rights of a substantial part of humanity.”

Sanya Samtani, Doctoral researcher in copyright and human rights at the Law Faculty, University of Oxford

“The TRIPS Agreement, through WTO membership, has near universal application across the world. Simultaneously, it must not be forgotten that the ICESCR also has near universal application with 174 states parties. Access to materials under copyright for educational purposes is guaranteed under international human rights law. During the pandemic, the closure of schools and libraries in order to contain covid-19 necessitates remote access to learning materials in order to realise everyone's equal right to education. Access to materials under copyright for scientific research, scientific knowledge and sharing in the benefits of scientific and technological advancements and their applications is guaranteed under the right to science in international human rights law. In a time where urgent scientific research is required for global public health and well-being, the accessibility of such research without the barriers of copyright is crucial to speed up the process of innovation.”

The need for promoting access to knowledge in and through the international system
Leading organizations supporting open access policies have endorsed today’s statement as part of a long term global campaign to support sharing knowledge resources with everyone.

John Bergmayer, Public Knowledge:

“Copyright and other intellectual property law must serve the public interest. Right now, at a minimum they must not stand in the way of how people adapt to challenging circumstances. Granting the TRIPS waiver proposal will be an important step toward the creation of an intellectual property system that allows the globe to best respond to challenges such as the COVID pandemic.”

Sunita Tripathy, Information Society, European University Institute, Italy, an academic lawyer in the field of innovation affecting health and high technology sectors, explained:
“Access to information and databases is crucial for verification, consumption, and importantly for innovation that can prevent, contain and even cure SARS-Cov2 infections and their variants. Copyright as with other IP rights was designed to incentivize such creative problem solving for human flourishing. However exclusive rights over research tools and vital data for a long duration of time and in the absence of open licensing creates more barriers and restricts innovation. In emergent times such as the current pandemic, it can result in inequity and serious human cost. The TRIPS waiver proposal is thus both important and timely so that the practice of openness and its benefits continue to percolate even as we cope with this pandemic and prepare to overcome other future pandemics.”

COVID and the Publishing Industry
Libraries, researchers and educational institutions dispute the claims of some that opening access to copyright for essential activities to prevent, contain and treat COVID-19 will harm the publishing industry. Indeed, publishing revenues increased during COVID.

In the UK, for example, publisher Bloomsbury, best known for publishing the Harry Potter books, declared that people have "rediscovered the pleasure of reading," leading to its best half-year profits since 2008 (profits jumped 60%).

In the US, Publishing Perspectives reported that print book sales in the US rose 8.2 percent in 2020 reaching 751 million units. The Association of American Publishers own statshot covering the year to November 2020 suggested year-to-date sales in all categories increased 0.8% compared to the first eleven months of 2019, representing a total of $13.6 billion.

Collective management organizations and publishers have been using the COVID pandemic to demand additional fees and licensing to use works online. Access Copyright, a reproduction rights collective in Canada, published an article warning organizations that “your co-workers are probably sharing content without permission from the copyright owners” during telework. “As a result,” the article warns, “your organization is leaving itself open to legal action for copyright infringement.”

In South Africa, a university lecturer was denied permission from a publisher and the local collective management organization to place sections of an e-book version of a textbook on her institution’s password-protected e-learning platform for the specific class for a period of 6 weeks.

Sean Flynn, of PIJIP, explained:

“The TRIPS waiver does not mean that every copyrighted work is suddenly going to be free to use for any purpose. The waiver is limited to uses necessary for the prevention, containment and treatment of COVID-19. Libraries and schools already pay publishers for materials and this will not stop. But they should not have to pay more for online uses needed because their facilities are closed.”

Other statements of support
Gauteng Meyer, Director, Universities South Africa

"USAf supports the TRIPS waiver proposal as an endorsement to open research and access to knowledge for society's greater good and to eradicate the COVID 19 pandemic nationally and internationally."
Paolo Guanaes, Editor executivo de revista científica, Fundação Oswaldo Cruz

“Porque é inconcebível se falar em vantagem ou recompensa financeira em tempos de emergência mundial de saúde, como a pandemia de Covid-19 que nos dizima nos dias de hoje” ("Because it is inconceivable to speak of financial advantage or reward in times of global health emergency, such as the Covid-19 pandemic that decimates us today")