Toward a TRIPS Truce

This Article offers a methodology that intellectual property rights (IPR) producers and consumers, and the nations that represent them, can use to breathe new life into the world’s premier international IPR instrument—the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS Agreement, as any treaty addressing the dynamic areas of intellectual property and international trade would, struggles to remain relevant in an age in which the internet is driving rapid technological advances and changing global business. However, the struggle is not in vain. This Article shows how a recent TRIPS dispute settlement case, involving a key provision of the famed TRIPS enforcement text, interprets that text in a way that increases the Agreement’s ability to adapt to a changing world. Furthermore, the Article encourages stakeholders on both sides of the IPR debate to use these newly-delineated and affirmed flexibilities to achieve their respective goals for the Agreement. Looking beyond the obvious implications of the decision, the Article argues that the case can serve as a starting point for significant change in the stereotypical, entrenched relative positions of IPR stakeholders on both sides of the negotiating table, all of whom have been given the tools necessary to interpret the Agreement’s most trailblazing sections in unexpected and creative ways.