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Deferring Intellectual Property Rights in Pandemic Times

In October 2020, India and South Africa submitted to the World Trade Organization an unprecedented proposal calling for a temporary suspension of Sections 1, 4, 5 and 7 of Part II of the TRIPS Agreement and related enforcement obligations for the purpose of preventing, containing or treating COVID-19. Slightly revised in May 2021, this waiver proposal covers not only patents, but also copyrights, industrial designs and the protection of undisclosed information, including trade secrets.

Thus far, the proposal has received considerable support from developing and least developed countries, the World Health Organization, the Committee on Economic, Social and Cultural Rights, and other intergovernmental and nongovernmental organizations. However, it continues to face resistance from a small group of developed countries. Although the United States changed its position upon the arrival of the Biden administration, its support remains limited and focuses only on the text-based negotiations for vaccines.

To break the impasse created by the supporters and opponents of the waiver proposal, this paper discusses ways to complement the waiver with a post-pandemic restoration of the term of intellectual property protection. It proposes a new deferral mechanism to maximize the benefits of temporal adjustments while minimizing the negative impacts on intellectual property rights holders.