Intellectual property

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This article is about the legal concept. For the 2006 film, see Intellectual Property (film).

Intellectual property (IP) is a term referring to a number of distinct types of creations of the mind for which property rights are recognised--and the corresponding fields of law.[1] Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and designs. Common types of intellectual property include copyrights, trademarks, patents, industrial design rights and trade secrets in some jurisdictions.

Although many of the legal principles governing intellectual property have evolved over centuries, it was not until the 19th century that the term intellectual property began to be used, and not until the late 20th century that it became commonplace in the United States.[2] The British Statute of Anne 1710 and the Statute of Monopolies 1623 are now seen as the origin of copyright and patent law respectively.[3]

### Objectives

These exclusive rights allow owners of intellectual property to benefit from the property they have created, providing a financial incentive for the creation of and investment in intellectual property, and, in case of patents, pay associated research and development costs.[4] Some commentators, such as David Levine and Michele Boldrin, dispute this justification.[5]

### Economic growth

The existence of IP laws is credited with significant contributions toward economic growth.[citation needed] Economists estimate that two-thirds of the value of large businesses in the U.S. can be traced to intangible assets.[citation needed] "IP-intensive industries" are estimated to generate 72 percent more value added (price
minus material cost) per employee than "non-IP-intensive industries". [6]

A joint research project of the WIPO and the United Nations University measuring the impact of IP systems on six Asian countries found "a positive correlation between the strengthening of the IP system and subsequent economic growth." [7] Other models would not expect that this correlation necessarily mean causation, such as the Nash equilibrium, which predicts they patent holders will prefer operating in countries with strong IP laws. In some of the cases, as was shown for Taiwan after the 1986 reform, the economic growth that comes with a stronger IP system might be due to an increase in stock capital from direct foreign investment.

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Rights and justice

Ayn Rand supported copyrights and patents, noting in *Capitalism: The Unknown Ideal* that they are the legal implementation of the base of all property rights: *a man's right to the product of his mind*. An idea as such cannot be protected until it has been given a material form. An invention has to be embodied in a physical model before it can be patented; a story has to be written or printed. But what the patent or copyright protects is not the physical object as such, but the idea which it embodies. Although it is important to note, that a discovery cannot be patented, only an invention. She argued that the term should be limited. If it were held in perpetuity, it would lead to the opposite of the very principle on which it is based: it would lead, not to the earned reward of achievement, but to the unearned support of parasitism.

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Economics

Intellectual property rights are the recognition of a property in an individual creation. Intellectual property rights are usually limited to non-rival goods, that is, goods which can be used or enjoyed by many people simultaneously—the use by one person does not exclude use by another. This is compared to rival goods, such as clothing, which may only be used by one person at a time. For example, any number of people may make use of a mathematical formula simultaneously. Some objections to the term *intellectual property* are based on the argument that *property* can only properly be applied to rival goods (or that one cannot own "property" of this sort).

Since a non-rival good may be simultaneously used (copied, for example) by many people (produced with minimal marginal cost), monopolies over distribution and use of works are meant to give producers incentive to create further works. The establishment of intellectual property rights, therefore, represents a trade-off, to balance the interest of society in the creation of non-rival goods (by encouraging their production) with the problems of monopoly power. Since the trade-off and the relevant benefits and costs to society will depend on many factors that may be specific to each product and society, the optimum period of time during which the temporary monopoly rights should exist is unclear. [9]

According to economist George Reisman, patents do not constitute monopolies. "[Patents] reserve markets, or parts of markets, to the exclusive possession of the owners of the patents,..., and they do so by means of the use of physical force inasmuch as it is against the law to infringe on these
rights. None of these constitutes monopoly, however, because none of them is supported by the initiation of physical force... The fact that the government is ready to use force to protect patents ... is fully as proper as that it stands ready to use force to protect [for example] farmers and businessmen in the ownership of their physical products, and to come to their rescue when they are set upon by trespassers or attacked by robbers." [10]

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History

See also: History of patent law and History of copyright law

Modern usage of the term intellectual property goes back at least as far as 1888 with the founding in Berne of the Swiss Federal Office for Intellectual Property (the Bureau fédéral de la propriété intellectuelle). When the administrative secretariats established by the Paris Convention (1883) and the Berne Convention (1886) merged in 1893, they also located in Berne, and also adopted the term intellectual property in their new combined title, the United International Bureaux for the Protection of Intellectual Property. The organisation subsequently relocated to Geneva in 1960, and was succeeded in 1967 with the establishment of the World Intellectual Property Organization (WIPO) by treaty as an agency of the United Nations. According to Lemley, it was only at this point that the term really began to be used in the United States (which had not been a party to the Berne Convention),[2] and it did not enter popular usage until passage of the Bayh-Dole Act in 1980.[11]

"The history of patents does not begin with inventions, but rather with royal grants by Queen Elizabeth I (1558-1603) for monopoly privileges... Approximately 200 years after the end of Elizabeth's reign, however, a patent represents a legal [right] obtained by an inventor providing for exclusive control over the production and sale of his mechanical or scientific invention... [demonstrating] the evolution of patents from royal prerogative to common-law doctrine." [12]

In an 1818 collection of his writings, the French liberal theorist, Benjamin Constant, argued against the recently-introduced idea of "property which has been called intellectual."[13] The term intellectual property can be found used in an October 1845 Massachusetts Circuit Court ruling in the patent case Davoll et al. v. Brown., in which Justice Charles L. Woodbury wrote that "only in this way can we protect intellectual property, the labors of the mind, productions and interests are as much a man's own...as the wheat he cultivates, or the flocks he rears." (1 Woodb. & M. 53, 3 West.L.J. 151, 7 F.Cas. 197, No. 3662, 2 Robb.Pat.Cas. 303, Merw.Pat.Inv. 414). The statement that "discoveries are...property" goes back earlier. Section 1 of the French law of 1791 stated, "All new discoveries are the property of the author; to assure the inventor the property and temporary enjoyment of his discovery, there shall be delivered to him a patent for five, ten or fifteen years."[14] In Europe, French author A. Nion mentioned propriété intellectuelle in his Droits civils des auteurs, artistes et inventeurs, published in 1846.

The concept's origins can potentially be traced back further. Jewish law includes several considerations whose effects are similar to those of modern intellectual property laws, though the notion of intellectual creations as property does not seem to exist – notably the principle of
Hasagat Ge'vul (unfair encroachment) was used to justify limited-term publisher (but not author) copyright in the 16th century.[15] The Talmud contains the prohibitions against certain mental crimes (further elaborated in the Shulchan Aruch), notably Geneivat da'at (גניבת דעת, literally "mind theft"), which some have interpreted[16] as prohibiting theft of ideas, though the doctrine is principally concerned with fraud and deception, not property.

Thomas Jefferson and James Madison, drafters of the Copyright Clause, were both quite skeptical to the monopolies of copyright, and monopolies of patents, and wrote extensively on the subject.[17][18]

Stable ownership is the gift of social law, and is given late in the progress of society. It would be curious then, if an idea, the fugitive fermentation of an individual brain, could, of natural right, be claimed in exclusive and stable property. If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation. "Inventions then cannot, in nature, be a subject of property." – Thomas Jefferson, to Isaac McPherson 13 Aug. 1813 Writings 13:333–35[19]

Criticism

Main article: Criticism of intellectual property

Richard Stallman argues that, although the term intellectual property is in wide use, it should be rejected altogether, because it "systematically distorts and confuses these issues, and its use was and is promoted by those who gain from this confusion." He claims that the term "operates as a catch-all to lump together disparate laws [which] originated separately, evolved differently, cover different activities, have different rules, and raise different public policy issues."[20] Stallman advocates referring to copyrights, patents and trademarks in the singular and warns against abstracting disparate laws into a collective term.

The laws

Some critics of intellectual property, such as those in the free culture movement, point at intellectual monopolies as harming health, preventing progress, and benefiting concentrated interests to the detriment of the masses,[21][22] and argue that the public interest is harmed by ever expansive monopolies in the form of copyright extensions, software patents and business method patents.
Some libertarian critics of intellectual property have argued that allowing property rights in ideas and information creates artificial scarcity and infringes on the right to own tangible property.

Stephan Kinsella uses the following scenario to argue this point:

Imagine the time when men lived in caves. One bright guy — let’s call him Galt-Magnon — decides to build a log cabin on an open field, near his crops. To be sure, this is a good idea, and others notice it. They naturally imitate Galt-Magnon, and they start building their own cabins. But the first man to invent a house, according to IP advocates, would have a right to prevent others from building houses on their own land, with their own logs, or to charge them a fee if they do build houses. It is plain that the innovator in these examples becomes a partial owner of the tangible property (e.g., land and logs) of others, due not to first occupation and use of that property (for it is already owned), but due to his coming up with an idea. Clearly, this rule flies in the face of the first-user homesteading rule, arbitrarily and groundlessly overriding the very homesteading rule that is at the foundation of all property rights.[23]

Other criticism of intellectual property law concerns the tendency of the protections of intellectual property to expand, both in duration and in scope. The trend has been toward longer copyright protection[24] (raising fears that it may some day be eternal[25][26][27][28]). In addition, the developers and controllers of items of intellectual property have sought to bring more items under the protection. Patents have been granted for living organisms,[29] and colors have been trademarked[30]. Because they are systems of government-granted monopolies copyrights, patents, and trademarks are called intellectual monopoly privileges, (IMP) a topic on which several academics, including Birgitte Andersen[31] and Thomas Alured Faunce[32] have written. [edit]

See also

Wikiquote has a collection of quotations related to: Intellectual property

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Further reading

References

- Lee, Richmond. Scope and Interplay of IP Rights ACCRALAW offices.
- Schneider, Patricia H. "International Trade, Economic Growth and Intellectual Property Rights: A Panel Data Study of Developed and Developing Countries". July 2004. [10]

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References


4. Prudential Reasons for IPR Reform, University of Melbourne, Doris Schroeder and Peter Singer, May 2009


11. Mark A. Lemley, "Property, Intellectual Property, and Free Riding" (Abstract); see Table 1: 4-5.


15. Jewish Law and Copyright


23. ^ N. Stephan Kinsella, Against Intellectual property (2008), p. 44.

24. ^ E.g., the U.S. Copyright Term Extension Act, Pub.L. 105-298.


30. ^ For example, AstraZeneca holds a registered trademark to the color purple, as used in pill capsules. AstraZeneca, Nexium: Legal. Accessed 2008.12.18.


32. ^ Martin G, Sorenson C and Faunce TA. Balancing intellectual monopoly privileges and the need for essential medicines Globalization and Health 2007, 3:4doi:10.1186/1744-8603-3-4. http://www.globalizationandhealth.com/content/3/1/4 "Balancing the need to protect the intellectual property rights (IPRs) ("which the third author considers are more accurately described as intellectual monopoly privileges (IMPs)) of pharmaceutical companies, with the need to ensure access to essential medicines in developing countries is one of the most pressing challenges facing international policy makers today.")
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