

Rethinking Intellectual Property: History, Theory, and Economics

Lecture 5: Property, Scarcity, and Ideas; Examining Rights-Based Arguments for IP

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Outrages of the Week

- See recent www.C4SIF.org posts
- [Mossoff: Why Should Business Leaders Care About Intellectual Property \(Objectivism\)](#)
- [Carson on IP and Slavery](#)
- [Huebert's Intellectual Property Debate at Whittier Law School](#)
- [Atlas Shrugged Movie, Ayn Rand, and IP](#)
- [Copyright as Creature of Statute](#)
 - “Unlike contracts, copyrights and the rights flowing therefrom are entirely creatures of statute....” (*Microsoft Corp. v. Grey Computer*, 910 F.Supp. 1077, 1084 (D.Md.1995))

Outrages of the Week

- [Google to sentence YouTube violators to 'copyright school'](#)
 - "Of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive. It would be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end for they do so with the approval of their own conscience. ... This very kindness stings with intolerable insult. To be 'cured' against one's will and cured of states which we may not regard as disease is to be put on a level of those who have not yet reached the age of reason or those who never will; to be classed with infants, imbeciles, and domestic animals." —[C.S. Lewis](#)
- [The Four Historical Phases of IP Abolitionism](#)

Other News

- See recent www.C4SIF.org posts
- [Property Title Records and Insurance in a Free Society](#)
- [IP Rights as Monopolistic Grants to Overcome the Public Goods Problem](#)



- Reichman: “Governments adopt intellectual property laws in the belief that a **privileged, monopolistic domain** operating on the margins of the free-market economy **promotes** long-term cultural and **technological progress** better than a regime of **unbridled competition**.”
- “... Intellectual property laws typically provide qualified creators with **temporary** grants of **exclusive property rights** that **derogate from the norms of free competition** in order to overcome the “**public goods**” problem inherent in the commercial exploitation of intangible creations.”

Other News (cont.)

- Alan Devlin: “The “patent bargain” is an easily understood concept. Awarding an inventor twenty years exclusivity naturally **entails considerable social cost** — a cost that rises in direct proportion to the value of the covered invention. In certain instances — those where the patented technology is so useful that no substitutes exist — the award of a patent creates a **complete economic monopoly.**”
- New York Law School professor Beth Noveck, quoted in an [article](#) on improving the U.S. patent system, admits: “A patent is a **pretty significant monopoly**, so we want to make sure we are giving it to the right people.”
 - <http://blog.mises.org/10272/are-patents-monopolies/>

Other News (cont.)

- [Wikileaks cables reveal that the US wrote Spain's proposed copyright laws](#)
 - See my post [Intellectual Property Imperialism](#)
- [Federalist Society's Intellectual Property Practice Group National Lawyers Convention Panel Online](#)
 - Richard Epstein et al.
- [Supreme Court refuses innocent infringement P2P case](#)

Other News (cont.)

- [Funding for Creation and Innovation in an IP-Free World](#)
 - See my post [Innovations that Thrive without IP](#)
 - [TWiT 275](#) (81:45 to about 85:17)
 - [Kickstarter](#), “a new way to fund creative ideas and ambitious endeavors....
 - Scott Wilson’s [use of the service](#) to raise funds to sell watchbands for use with the new iPod nano (which has a clock interface). The set a goal of having \$15,000 committed; as of the date of this post they have had almost \$500k pledged. This guarantees enough funding and demand for the product to get off the ground.
 - [IndieGoGo](#) allows projects to be funded
 - low budget documentaries
 - [Quirky.com](#) – site that enables “social product development.”
 - lets you outsource various parts of engineering or manufacturing or product development to others, and give them a cut of profits.
 - Micropledging service The Point, used recently by Austro-libertarians Bob Murphy (to [challenge Paul Krugman](#) to a debate—\$56k pledged so far) and Vijay Boyapati to raise almost \$20k for the Mises Institute—see Jeff Tucker’s [The Age of Micro-Patronage](#)).

Other News (cont.)

- [The Effects of Patent and Copyright on Hollywood Movies](#)

Hoppe on IP

- 1988:

- AUDIENCE QUESTION: I have a question for Professor Hoppe. Does the idea of personal sovereignty extend to knowledge? Am I sovereign over my thoughts, ideas, and theories? ...
- HOPPE: ... in order to have a thought you must have property rights over your body. That doesn't imply that you own your thoughts. *The thoughts can be used by anybody who is capable of understanding them.*
 - <http://c4sif.org/2010/12/hoppe-on-intellectual-property/>

Hoppe on IP

- 2011 ([Daily Bell interview](#)):
 - the idea of intellectual property rights is not just wrong and confused but dangerous. And I have already touched upon why this is so. Ideas – recipes, formulas, statements, arguments, algorithms, theorems, melodies, patterns, rhythms, images, etc. – are certainly goods (insofar as they are good, not bad, recipes, etc.), but they are not scarce goods. Once thought and expressed, they are free, inexhaustible goods. ...
 - Now imagine I had been granted a property right in my melody or poem such that I could prohibit you from copying it or demanding a royalty from you if you do. First: Doesn't that imply, absurdly, that I, in turn, must pay royalties to the person (or his heirs) who invented whistling and writing, and further on to those, who invented sound-making and language, and so on?

Hoppe on IP

- 2011 ([Daily Bell interview](#)):
 - Second: In preventing you from or making you pay for whistling my melody or reciting my poem, I am actually made a (partial) owner of *you*: of your physical body, your vocal chords, your paper, your pencil, etc. because you did not use anything but your own property when you copied me. If you can no longer copy me, then, this means that I, the intellectual property owner, have expropriated you and your “real” property. Which shows: intellectual property rights and real property rights are incompatible, and the promotion of intellectual property must be seen as a most dangerous attack on the idea of “real” property (in scarce goods).

Copyright v. Trade Secret—class query

- Question from Paul Szczesny

- After going through the arguments on trade secrets, I can't distinguish how a company could be charged as a co-conspirator in soliciting a trade-secret, while a 3rd-party would be immune to such charge under a copyright contract.
- If book seller has a contract with its buyer not to copy or transmit the contents of a book, couldn't the receiver of such a copy also be charged with conspiracy, or at least, accessory to the breach?
- Similarly, couldn't hosting providers or domain registrar's be considered as aiding this breach of contract? If a website becomes known for such breaches, might this not constitute some form of negligence?

Where we left off...

- Overview of arguments for IP
 - Rights based (deontological, creation-based, natural law, principled)
 - Wealth-maximization (utilitarian, consequentialist)

Today's Lecture

- Natural rights (“creation”) arguments for IP
- Property, Scarcity, and Ideas
 - the nature of property rights, role of scarcity, and the function of the market

Property, Rights, Scarcity

- Why do we need property?
- Imagine Garden of Eden
 - No scarcity
 - No conflict
 - No need for production
 - No need for rationing
 - Property rights unnecessary
 - Property rights *meaningless*

Property, Rights, Scarcity (cont.)

- “only because scarcity exists is there even a problem of formulating moral laws; insofar as goods are superabundant (“free” goods) no conflict over the use of goods is possible and no action-coordination is needed. Hence, it follows that any ethic, correctly conceived, must be formulated as a theory of property, i.e., a theory of the assignment of rights of exclusive control over scarce means. Because only then does it become possible to avoid otherwise inescapable and unresolvable conflict.”
Hoppe, TSC, p.158n120

Property, Rights, Scarcity (cont.)

- Importance of scarcity for definition of property has long been known
- **David Hume**, 1751 (see [Hume on Intellectual Property and the Problematic “Labor” Metaphor](#))
- **Benjamin Tucker**, 1890s (see [McElroy’s “Contra Copyright, Again”](#))
- **Arnold Plant**, 1934, “[The Economic Theory Concerning Patents for Inventions](#),” 35–36
- **Rothbard**: see my post [Justice and Property Rights: Rothbard on Scarcity, Property, Contracts...](#)
- **Tucker & Kinsella**, [Goods, Scarce and Nonscarce](#)

The nature of property rights, role of scarcity, and the function of the market

- We do have scarcity
- Implications of scarcity
 - Conflict
 - Exclusive use
- Nature of action: praxeology
 - **Purposeful use of a (scarce) means** to achieve a desired **end** or goal
 - Presuppose categories of action
 - Subjective value
 - Choice
 - Demonstrated preference
 - Causality
 - Means and ends
 - Opportunity cost
 - Profit and loss

The nature of property rights, role of scarcity, and the function of the market

- Role of scarce resource in action
 - *Means* of action
- Role of knowledge
 - *Guide* to action
 - Enriches universe of **ends and means**
 - Recipe/cake examples
- Role of property rights
 - Assign owners to scarce resources to permit productive and cooperative use
 - Spoon in cake example: need ownership (control)
 - Ideas are non-scarce
 - No ownership needed
 - Many can use same recipe

The nature of property rights, role of scarcity, and the function of the market

- Acquisition of knowledge
 - Accumulation of human knowledge
 - Informal and formal learning
 - Emulation on the market
- Key aspects of free market
 - Property rights permit competition
 - Property rights allow competition
 - Competition benefits consumer
 - Competition requires *emulation*
 - Iterative process
 - **Play Nina Paley video, [Copying is not Theft](#)**

Goods, Scarce and Non-scarce

	Scarce	Nonscarce
Good	Bagel, Factory, Shoes, People, Desk	Recipe, Idea, information, knowledge, Tune, Image, Skill, Fire
Nongood	Mud Pie, Poison Soup, Slug, Road Kill	Bad Idea, Awful Sound, Gibberish Text



Other issues...

- Perversity of artificial scarcity of information and knowledge
- Diluting effect of new rights
 - Negative and positive rights
 - Welfare rights as trespass
 - Four Freedoms
 - Inflation analogy
 - IP rights as positive right
 - Redistribution of rights
 - Recall origin in monopoly privilege and censorship
- The basis of libertarian rights and norms
 - Big topic