

IP is the Enemy of Technological Progress

I was recently asked whether I thought intellectual property (IP) encourages or inhibits innovation. I believe the latter for several reasons, but first, let's cover some background.

Intellectual property is hotly debated among libertarians, although I get the sense that a growing majority of serious libertarians are in favor of abolishing intellectual property laws or at least radically reducing their scope. There are really two sides to the IP question: the question of whether there is a sound philosophical basis for recognizing intellectual property rights and the question of whether such recognition is societally necessary and/or beneficial as an incentive to invest in creative ventures.

I won't address the philosophical bases for IP that have been offered except to say that as far as I'm concerned, there are no sound philosophical, rights-based foundations for IP. Many thinkers including Stephan Kinsella, Sheldon Richman, Kevin Carson, and dozens of others have decimated every philosophical justification that has been offered for IP.

Taking a more consequentialist angle, IP laws, specifically patent laws in this context, have the net effect of discouraging innovation and technological advancement for (at least) three reasons:

1 - They distort innovation portfolios.

Innovation exists on a spectrum from marginal to disruptive. Because marginal innovations are often not patentable, the incentives provided by patent protection encourage a "societal innovation portfolio" that emphasizes disruptive innovation more than it would absent the incentive. One could make the argument that a society benefits more from a focus on disruptive innovation, but I believe that the only practical way to actually determine the optimal innovation portfolio to benefit society is to allow market forces to do their thing as free as possible from arbitrary distortions of incentives.

2 - They inhibit marginal improvements on disruptive innovations.

Once a potentially disruptive innovation is made and patented, others are prevented from making marginal improvements on the technology without making licensing payments to the innovator. Surely more innovation would occur if people were free to fork technologies in the same way you can fork a repo on github. A counterargument might be that the disruptive innovation might never have occurred in the first place, but I think it's highly unlikely that humans will stop pursuing disruptive innovations simply because they're not granted a monopoly by the state. I think it's probable that in the absence of IP, disruptive innovations would tend to be undertaken less by garage tinkerers and more by established businesses that would be better equipped to evaluate their potential and commercialize

them.

3 - They cause resources to be diverted into enforcement and litigation that add little to no value to the consumer.

Patent litigation is expensive and so are business strategies that rely heavily on it. If there's a potential state-granted monopoly on the line, such expenses may be worth it, but in the absence of such opportunities for monopoly, I think those resources would tend to be used in pursuit of other competitive advantages, including more research and development.

For a much more thorough consequentialist case against IP, take a look at Boldrin and Levine's *Against Intellectual Monopoly*.