

So-Called Intellectual Property

“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.” – Thomas Jefferson

Property ownership is central to liberty and civilization. Property rights prevent conflict over the use of scarce resources. Ironically, the term “intellectual property” (aka “IP”) represents a hodgepodge of concepts that generally introduce artificial scarcity and needless conflict.

The term “intellectual property” is a biased overgeneralization that prevents clear thinking. The first step in untangling the conflated IP mess is to identify the distinct concepts that it represents. There are three main things commonly considered to be covered by the IP umbrella: copyright, patent, and trademark.

Copyright: A copyright is said to exist when a “work” is “fixed” in a “tangible medium of expression”. The creator of said “work” is granted exclusive rights of “distribution” of their “original expression”.

Patent: Patents are granted to exclude people from making, using, selling, importing, or distributing an “invention”.

Trademark: A trademark is a recognizable symbol that identifies the brand owner of a particular product or service.

“These laws originated separately, evolved differently, cover different activities, have different rules, and raise different public policy issues.” – Richard Stallman

Ideas Are Not Property

Ideas are not scarce and their use is not rivalrous (in most cases, it is actually anti-rivalrous). In a free society, people cannot claim the exclusive power to express, adapt, or implement ideas.

Copyrights and patents are legal fictions. They are monopoly privileges that create artificial scarcity, introduce needless conflict, and pretend to justify censorship and trespass against

private property.

Rights are not conjured by governments. To say that people don't naturally have the right to observe, think, communicate, and use their own resources as they see fit is to say that they have no right to see, hear, read, remember, learn, teach, share, trade, work, create, or improve.

In the absence of private ownership, demand for finite resources overwhelms supply. This is known as the tragedy of the commons. It causes conflict and removes the incentives and consequences that come with ownership responsibility. When people claim to own the expression and implementation of ideas, there arises another kind of cooperation breakdown known as the tragedy of the anticommons. In this case, others claim the right to control your property and peaceful behavior. They will use violence against you for being productive and cooperative. Patent thickets stifling innovation and patent trolls who seek to profit by preventing others from being productive are examples of this tragedy.

Fraud and Consumer Protection

“Trademark law, by contrast, was not intended to promote any particular way of acting, but simply to enable buyers to know what they are buying.” – Richard Stallman

Deceiving others for financial or personal gain is fraud. This includes mislabeling what you present to others. Seals and other identifying symbols for individuals and groups have been used for millennia to authenticate documents and packages. If someone is defrauded, they can sue the perpetrator for fraud. In a free society, registration and protracted use of a symbol would still be a wise way of establishing and communicating a brand.

Labels for Imaginary and Emotional Property

While we're on the subject of false labels...

If you want to prevent manufacturing and knowledge sharing, you can start by calling it the activity of “pirates” (which is associated with killing, stealing, abuse, and enslavement). Never mind that those doing the manufacturing and sharing the knowledge are using their own resources to do it.

Making copies is not theft. It is just arranging property you own in a pattern of your choosing. It's not really different from cutting your hair in the same style as another person. It does not affect their hair at all. Their feelings may be hurt, but that would only be reason to call style “emotional property” and fashion “emotional piracy”.

Such “imaginary property” mischaracterizations turn abundance and creativity into scarcity and stagnation. So-called “intellectual property” is a direct threat to actual property.

Emotional property “Intellectual property”: Thoughts you are not allowed to express or act on. Or my daddy will take your stuff and beat you up.

Creativity and Prosperity in a Free Society

In a free society, people do not need permission to take action with and on their own property, provided only that they do not infringe on the property of others.

So what can authors, musicians, and inventors do to make money without IP monopoly privilege? One might also ask how anyone gets paid for anything without monopoly privilege. How do cooks make money, since people are allowed to buy ingredients, share recipes, and even cook whatever they want? How do tailors make money, since people are allowed to buy materials, share patterns, and make any kind of clothes they want? If you can’t find a way to make a profit without resorting to controlling the property of other people, you shouldn’t be doing it.

Before I list some strategies, models, and tools for monetizing creative work without threatening people, I would like to summarize some practical problems with IP:

1. IP wasn’t established to benefit creators, it has always been industrial protectionism for publishers and manufacturers (and by extension, lawyers) to best exploit the work of creative people. It is not in the interest of creative entrepreneurs to promote IP.
2. The existence of IP law hasn’t stopped people from copying things anyway, especially in an increasingly global economy. Dealing with copying and imitation is something creative entrepreneurs have to account for in any case.
3. In addition to international law issues, new technologies like 3D printing, cloud computing, and bio-engineering are rendering IP law even more difficult to enforce.
4. Even more innovation would happen if the huge sums of money wasted on patents and lawsuits were spent on research and development.
5. If IP monopolies were legitimate, then why should they be allowed to expire at all? Also, why aren’t so-called “fair use” exemptions considered infringement on IP? Not only is IP unjust, it is incoherent and absurd.
6. Nobody profits from obscurity. There are plenty of authors, musicians, and inventors that don’t make money now, even with monopoly privileges. When creative people see digital content for what it is (advertising), they learn that in order to sell a physical product (book, painting, etc), live experience (in-person concert, live streaming, etc), or

technical solution (website design, technical support services, etc) they must build a good reputation. Good reputations have always been built by viral marketing (previously known as “word of mouth”), and digital content has just made marketing easier than ever. Sharing digital work for free is a great way for a creator to get attention, as well as to expose an audience to other work they have done. Businesses pay good money for broad exposure to the market, and digital content sharing is an opportunity to get that exposure for free.

Still, it’s exciting to look on the bright side at some of the models, strategies, and tools for monetizing creative work in a free society. The variety of strategies for creative professionals continues to evolve along with new technologies. Of course, the most successful creative entrepreneurs employ a combination of strategies, and this is by no means an exhaustive list.

First Mover Advantage

There is a first-mover advantage in all markets, and competitors are unlikely to risk investment in competing with an established producer unless the product or service is not reasonably priced or attractively presented.

Perpetual Creation

Profits are ephemeral, and when a first mover advantage wanes (under an IP system or otherwise), creators release new works. This natural incentive spurs innovation in every industry. If you need thought police to guarantee perpetual income from a single effort, you may want to take another look at your ethics and value proposition. European classical composers continually created outstanding music (some with compositions in the thousands) before the introduction of copyright.

Advance Payment

Writers can insist on payment in advance from publishers for completed work. British authors in the 19th century actually made more money from selling “first printing” rights to US publishers than they did under the copyright and royalty system in Britain. They also enjoyed more popularity in the US than American authors who relied on US copyright law.

Patronage / Sponsorship

Artists with great reputations have created great works with support from patrons and sponsors. Patrons could be wealthy donors, supportive family members, or corporate sponsors.

Self-Patronage

If artists don’t want to sell what patrons (or clients or large crowds) want, they can choose self-patronage. Self-patronage is when an artist pursues a different occupation as a primary income source and creates art during leisure time. While this option limits

scheduling of creative time, it frees up the creator from the demands of others and allows for more authentic expression. If their work gains popularity, it is a bonus. If it does not, their lifestyle is not at risk and they can continue or adapt their approach as they please.

Crowdfunding and Collaboration

There are several popular platforms that allow people to pledge payment for development of products and services they want and collaborate with others. Examples include kickstarter, gofundme, indiegogo, patreon, flattr, and quirky. Optional services like escrow, phased funding for incremental deliverables, additional rewards for stretch goals, and limited edition or personalization opportunities make ideas like these even better for creators and their customers. A “guaranteed minimum market” through crowdfunding can also save what might otherwise be wasted effort (perhaps writing the first chapter of a story to see how popular it would be before deciding whether or not to finish it).

Donations / Pay What You Want (PWYW)

It may sound unreal, but asking for donations can result in even more money than threatening people for sharing. The band Radiohead got a bunch of attention for doing it in 2007 with their album In Rainbows, and they made even more money from the digital “donations” than any of its previous album releases despite plenty of people not donating at all. Another outstanding example is Humble Bundle, which offers bundles of software and other digital materials like music on a “pay what you want” basis. They even allow those who pay to name their own price and decide how their donation will be distributed, in addition to offering incentives like upgrades and additional content to those who reach pre-set contribution thresholds. This approach has been proven to work especially well with a charity component. It can also work well as a follow-on to prepayment/crowdfunding efforts for those who would like to “tip” creators after goals are reached and content is released.

Creator-Endorsed Marks

Creator-endorsed marks (similar to trademarks) could be used to endorse specific vendors, whether in exchange for a share of publication/distribution profits or not. They could also be used to endorse specific models, prices, value chains, and more. People are more likely to buy from a source that shares their values. It also can have value similar to authorized biographies and celebrity endorsements. These and other labels also empower cool things like social entrepreneurship, cross-provider reverse boycotting, and non-governmental industry accountability and regulation efforts.

*“Let us stand on each other’s shoulders, not each other’s toes!” –
Dennis Allison*