

A Conversation Between Voluntarists: What's with IP?

Kenny Kelly's Introduction: Kilgore and I have had another discussion. This time about intellectual property (IP) laws and their role, if any, in a free society. This topic is not as much of a debate as the last, but still worth having.

Kilgore Forelle's Introduction: Kenny and I got together, again — this time to discuss the thing inadequately labeled as “intellectual property.”

As H. L. Mencken once wrote, “... there is always a well-known solution to every human problem — neat, plausible, and wrong.” He must have been addressing the statist response to ‘IP,’ copyright, and patent.

Kenny: Thesis: Intellectual property (IP) is defined by Merriam-Webster as that which “derives from the work of the mind or intellect; also : an application, right, or registration relating to this.” In other words, IP is intangible property that an individual has yet to mix labor with something physical to make an actual thing. “Property rights,” as understood by libertarians, are claims to ownership of tangible objects. Not ideas.

Kilgore: Kenny, it looks as though we are going to agree, but perhaps for different reasons — not that the reasons are incompatible.

I take the very empirical view that an object has to occupy a distinct locus on a space-time continuum. I would state it this way — ideas do not occupy space and cannot be a thing until they do. An object is a person, place, thing, or event.

Although an idea could be called a thing, it is an abstract thing until it is connected with something concrete. Often the concrete association is achieved by monetization.

If you can get someone to pay you for the right to use your idea then it has taken its place among the set of things that occupy unique addresses in time and space.

For example, the Beatles had an idea that became “Back in the USSR.” It is ironic that Paul decided to borrow ideas from Chuck Berry (Back in the USA) and the Beach Boys (California Girls), but to craft these into a third, unique product. So, who owns this musical gem? It is the belonging to an association that makes it an owned combination of things, a thing itself. It is owned by Chuck Berry, one or more of the Beach Boys, Paul McCartney, John Lennon, the Studio, the minions, the recording company, the crafters of the Beatles’ instruments and equipment, and anybody who bought an instance of the song (ie. a track on the “White Album”). The free market took care of those single relationships that needed more defining.

Kenny: Yeah not incompatible, because I agree. I guess the question is: do you believe IP should be abolished or reduced?

Kilgore: I believe that IP cannot be codified by the fictions of legislation or regulation.

As we see from the Beatles example, relationships are 1-to-1 but can become very complex. We cannot devise a one-size-fits-all model. The voluntary, individualist market arrangements that arise naturally for the least complex part will suffice to self-govern that part. Complexity only accumulates one relationship at a time. Each relationship has simple self-governance, or else it is a complex relationship where all objects do not have natural, balanced participation.

I don't intuit that we need IP. An idea that is just a thought exists only within 1 person. It is not shared. Until it is shared, the question of ownership does not arise. When the first question of ownership arises, it is within a 1-to-1 relationship, therefore voluntary agreement can take place, without compulsion. Added relationships may bring complexity, but if each relationship is voluntary 1-to-1 the complex will be simple in principle. Any addition of un-agreed rules adds complexity, necessarily. It does not simplify the complex, rather it confounds.

Kenny: I agree. I mean, ideas are finite and are not subject to "stealing."

Kilgore: Ok, so where does this leave us now? I think we are both opposed to locking down the access to an idea. But don't we also respect the person who has committed his idea to a form that can be transferred. Do we, as free marketers, tell anyone that they cannot offer an artifact for sale on the open market? Isn't that free marketer also entitled to say, "Pass on by if you do not value my product enough to pay an agreed upon price for it. The seller can only create a small monopoly within the bounds of his marketed goods.

Where I have a problem is when middle men become involved, to create an artificial scarcity where one would not naturally exist.

Here's an example. As a software engineer, I specialized in usability. But an overwhelming part of the research literature was hidden from the public, because it was being held hostage by the two largest research organizations for the purpose of selling annual dues agreements. I was a student at the University of Kentucky (UK), and as such, I could tap both of these sources by going in person to the Engineering School Library. I could not access them at my own school where I worked because the Library at Kentucky State University (KSU) would not pay the steep institutional price. I personally felt that the price for an individual membership was astronomical (probably done to maintain the lucrative major institution gravy train).

The upshot was that I was not a subscriber to either source of material.

I am struggling with isolating the principles that are involved here.

Kenny: The “monopoly” isn’t the issue. The issue is how that monopoly is formed. If it’s from a producer, that’s okay. If from the government by force, then not so much.

Kilgore: How do you address the example I gave?

Kenny: As long as the organizations didn’t have government protection then it’s a free market thing. If they did, then it’s an artificial monopoly that ought be ended.

Kilgore: Weren’t the teeth behind their withholding of ideas supplied by governments’ willingness to enforce copyright laws?

Kenny: In this case, I don’t know. If so, then it’s an artificial monopoly. If not, it’s the free market.

Kilgore: I think the question is: if there were no government threat of violence would copyright and patent be implementable? A following question is: would civilization disintegrate?

Kenny: No and no. People would have to learn to be more strategic with their work.

Kilgore: So what I’m hearing is that people who learn would become more strategic. It is like the market itself — it changes to fit the situation. If copyright and patent are not there as artificial protections, then creative people will arrive at creative solutions to derive value from their labor.

It sounds as if it could be self-organizing, without threat of government enforcement.

In a voluntaryist society people would either make person-to-person agreements to exchange money, goods, or services for creative artifacts, or the creator who wanted to sell to mass consumers would have to accept the risks of putting a copyable format out there in the big world.

Kenny: Exactly. Rothbard talked about how IP can be protected without government. Rothbard wrote a lot of articles about it. This is one that’s easier to read.

Kilgore: That’s an excellent reference, Kenny, wherein Rothbard emphasizes the organic nature of property holding in an open market with polycentric law. If the property exists concretely it can only change ownership through voluntary transaction or theft. The most basic, natural laws against theft will suffice.

Apart from that, a second market principle applies. A creator must consider comparative advantage when deciding how to protect his own interests. Is it more effective to pursue

the casual copier/downloader or the for-profit pirate? Is it more rational to pursue the pirate in the bigger market or the smaller? Does one get more bang from chasing the pirate in the market at hand or in the distant one.

Someone once told me that he was advised to protect all frontiers of copyright or risk being deemed to have waived the copyright. Is this a thing? If so, wouldn't it make far more sense to rely on common law relating to theft?

Kenny: I don't know, IP laws are based on coercion. That's why in today's market if I record or publish anything I'd put it in public domain so no one can claim ownership of it.

Kilgore: Public domain it is. Anything I do is in the public domain. The fictional legislative interventions bring on a market response — it is too costly in terms of time, effort, and hassle to use copyright procedures.

If I suffer insupportable damages, ie. a real crime has been done, then I can avail myself (having awaited an actual event) of ancient common law, natural law and ethics as they apply. This is an instance of observing Ockham's Razor.

Kenny: In conclusion, IP laws would be unnecessary in a free market. If you take pride in your work it would be prudent to be patient and form a business strategy. IP laws seem to be supported by impatient people or those who lack business savvy, from the average Joe to corporatists.