

Intellectual Property: Skyler J. Collins vs. Alex R. Knight III

I had a little back and forth in the comment section on one of my recent podcast episodes with my friend Alex Knight (ARK3). I thought I'd reproduce it here in all its glory. First listen to Episode 453 of "Everything Voluntary" for my thoughts on patent and copyright as it relates to Facebook being fined by the Italian government for copying a competitors' software features. Within those thoughts I referenced some of Alex's views on the topic.

ARK3: As I stated in our conversation (Episode 384), I *don't* think "you" (anyone but the creator, or someone they knowingly and willingly license) should be able to do *anything* with Spider-Man. Anyone should be able to — and can — create an original superhero...which then becomes that person's property. (An article by Alex on intellectual property: <http://strike-the-root.com/intellectual-property-and-liberty>)

Skyler: Right, sorry if I wasn't clear on what you said. From your article:

To be more direct, 'patent' seeks to forever insulate the originator of an overall idea from any and all forms of competition, improvement, or innovation. Whereas 'copyright' seeks only protections and exclusivity for the creator of a certain unique version of an idea. One cannot 'patent,' thus, the wheel. But Good Year, Michelin, Pirelli, and a thousand or more other companies may 'copyright' their modern versions of it.

How about: "One cannot 'copyright' Spider-Man. But Marvel, DC, MadeupnameA, and a thousand more companies may 'copyright' their versions of Spider-Man.

What's the difference? Both patents and copyrights create a monopoly use on a particular pattern of information, of knowledge. I fail to see the distinction, but I'm willing to come part way to protecting specific implementations of "the wheel" and "Spider-Man", but not as general ideas. "Spider-Man" can be as general as "superhero" if we imagine a million versions of Spider-Man. I think that would be progress from the current position worldwide.

ARK3: I think your interpretation of what constitutes a sufficiently "unique" version might be far more liberalized than my own. □ This is why private adjudication would be so vital in a truly free-market system of "copyright": There would need to be, I think, more or less commonly accepted standards in terms of what constituted a sufficiently original iteration

of X, Y, or Z in such arrangements. This would, no doubt, keep the PROs (problem resolution organizations) very busy (more overhead for inventors, more commerce for PROs), but I still see that as far preferable to the communistic alternative where everyone's idea automatically becomes everyone else's property. In fact, as I believe I stated at the time in your podcast, I feel such a "copyright" system is a necessary element of a capitalistic society in general.

Skyler: Even Marvel has 2 versions of Spider-Man, and DC 2 versions of Batman these days.

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That's the issue, if ideas aren't subject to property rights (originally constructed to deal with scarcity, which ideas are immune from), then it's no one's "property".

ARK3: Marvel and DC have the right to produce as many versions of their own characters/property as they care to. No one else does, or should, without specific license to do so from those owners.

I disagree that ideas are not scarce (especially really good ones) — many, if not most of them are, in fact, absolutely unique in their specificities. That is not inconsequential. At any event, to communize ideas is not conducive to the sustenance of a capitalistic society. Except, perhaps, in instances where the originator specifically chooses to make their ideas public property. Which remains comparatively rare, of course, in any environment in which there is a potential for profit (as there should always be in such cases).

Skyler: Inventive and innovative people are scarce. But ideas are not. Every person in existence can use an idea at the same time without interfering with anyone else's use. Ergo, non-scarce. And not true for, say, some particular acre of land, or some particular automobile. Physical reality entails scarcity, and scarcity entails the possibility of conflict. There is no conflict when two or more people use the same idea simultaneously. And we could probably go on forever debating this...

Real property rights and intellectual property rights cannot coexist, in my opinion. One must take supremacy, and here's why: We can't both use my car at the same time. We can both use your idea at the same time. If I don't allow you to use my car, I have not interfered with your use of any of your real property. If you don't want me to use your idea, you have interfered with my use of my real property. My property right in my car does not affect your or your property. Your property right in your idea does affect me and my property. My owning my car does not interfere with you, but you owning your idea does

interfere with me. Ergo, intellectual property rights trump real property rights. I believe this is how Ayn Rand saw it. Taken to its logical conclusion, there would be zero competition in the production of any and every idea created by man. Since everything is a remix of something prior (truly), everyone is violating someone's IP rights in everything they create. Markets simply couldn't exist if intellectual property rights were given their due.

ARK3:

If you don't want me to use your idea, you have interfered with my use of my real property.

I think this is crux of where we disagree, and I do not agree whatsoever with that premise, nor do I agree with the idea that there must be either "real" property, or IP. The two can, and do, coexist — albeit better within free-market "law" as opposed to government.

The suggestion that preventing you from using my specific iteration of an idea is "restricting" you and use of your property is no different than suggesting that disallowing you to have a party on my front lawn, free of charge, is somehow oppressive. Yes, I know — my yard is "real," and what's in my mind "isn't." I think that's very, very wrong. You're essentially saying my emotions, my thoughts are not mine. Ideas possess even greater agency since they are the starting point of bringing material things into the physical world — all the more reason to treat them as property!

I don't think we're ever going to see eye to eye on this point of contention. I can only end by saying that even the State-sanctioned version of "copyright" is preferable to the inherently communistic view you've taken.

Skyler:

albeit better within free-market 'law' as opposed to government.

We can agree here. The market, competitive dispute resolution services, should handle this. I believe IP will be resolved out of existence this way, but that's just my guess.

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There's only one front lawn. We can't use it at the same time. That scarcity necessarily entails the possibility of conflict, hence the construction of property rights to assign ownership and prevent conflict.

An idea is not limited in this way. Everyone can use it at the same time. That lack of scarcity necessarily entails the impossibility of conflict, hence the construction of property rights to assign ownership would be an artificial creation of scarcity were none naturally existed, hence the artificial creation of the possibility of conflict. Property rights were constructed to reduce conflict over scarce resources and IP rights were constructed to increase conflict over non-scarce resources. Which is more libertarian, moving toward peace, or away from it?

You're essentially saying my emotions, my thoughts are not mine.

Yes, that is exactly what I am saying. You *have* emotions and you *have* thoughts. They are not subject to property rights. Your body, however, is, because it is a scarce resource and we may disagree on how you should use it. People see "yours" and "mine" and think property rights. This is a mistake, and a limitation of the English language. *Your* girlfriend is not your property. Neither is *your* reputation. Nor is *your* weariness with this conversation.

the inherently communistic view you've taken.

This is a nonsensical statement. "Communistic" implies scarce resources. Ideas are not a scarce resource. They cannot be "communistic" nor "capitalistic". They just *are*.

ARK3: I think private adjudication will perform the direct opposite way, and strengthen IP. You are correct, however, in that this is just a guess — and one which will probably remain purely academic during our lifetimes.

Yes we can use the same thoughts at the same time, unlike a car or a house, or my yard — but if you are profiting from my thoughts, my ideas, then I say you should not be permitted to do so. Not any more than you should be able to commandeer any of those other things without my express permission.

We're not talking semantics here — "my" girlfriend, "my" reputation. I contend that thoughts, emotions, ideas are things, are property in spite of their uniquely intractable nature.

Ideas are not only scarce — they are unique to each individual. Each iteration of such bears the stamp of my own unique vision, intelligence, psychology. No one is or should be at

liberty to usurp that and profit thereby.

I can see we're going to continue to disagree here. And in the libertarian camp, this debate will continue *ad infinitum*.