

INTELLECTUAL PROPERTY RIGHTS AND HUMAN RIGHTS

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The 20th century was one long economic experiment, with many countries falling prey to a philosophy that privately-owned economic goods did not benefit the general public. Indeed, some argued that private property was antithetical to the public good, and that for the greater public good, property had to be taken from its owners and redistributed.

What was clear as we moved into the 21st century is that those experiments failed. Property rights are now recognized as essential for economic progress. In a property-rights regime, the public *does* benefit from privately owned goods. Workers earn income and improve their situations with property and capital owned by others. They have an incentive to produce beyond what is necessary for subsistence, which leads to the creation of more capital and further economic growth. And economic growth is essential for populations to have food, housing, education, a clean environment and financial security.

SAME SONG, SECOND VERSE

However, the 21st century has begun with a new twist on property rights: Is the public harmed by the private ownership of intellectual property (IP) goods? And, if so, should intellectual property goods lose their property protection for the benefit of all?

That is precisely what some activists and civil society organizations have been arguing, and they have managed to persuade some governments to adopt their position. This effort has hung a cloud of suspicion over intellectual property protection and has imperiled the further implementation of beneficial intellectual property regimes in developing countries.

Fortunately, earlier and wiser voices concerned about protecting human rights were insightful enough to also

address the issue of intellectual property—and to include IP protection in some of the basic documents that the world looks to as pillars of civil society. So, in order to refresh our memories, let's take a look at some of the IP protections propounded in those documents.

RECOGNITION OF INTELLECTUAL PROPERTY RIGHTS

What follows are excerpts from a number of documents, most of which have widespread international support. What is clear is that those concerned about human rights made a conscious and concerted effort to ensure that intellectual property rights were protected.

(1) **The U.S. Constitution:** "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;" (Art. 1, Section 8, Clause 8)

The U.S. Constitution contains both specific protections for and limitations on intellectual property. These protections were not placed there by multinational corporations. Rather, the protections of intellectual property in the Constitution were a logical extension of the protection of property, and were designed to protect the rights of creators and inventors.

(2) **The American Declaration on the Rights and Duties of Man:** "He likewise has the right to the protection of his moral and material interests as regards his inventions or any literary, scientific or artistic works of which he is the author." (Article 13)

The Declaration (1948) was the "first international human rights instrument," according to Wikipedia. And this language has been reused repeatedly in international human rights documents to secure the right of creators to own and profit from their creations.

(3) **The Universal Declaration of Human Rights:** "Everyone has the right to the protection and material interests resulting from any scientific, literary, or artistic production of which he is the author." (Article 27)

The 1948 Declaration clearly asserts that the right to intellectual property protection is a human right.

(4) **International Covenant on Economic, Social and Cultural Rights:** (Article 15, ratified by the UN General Assembly on December 16, 1966):

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Note that while everyone has the general right to benefit from innovation, those who create innovations have a specific right to the “protection” of “material interests” resulting from their own innovations. This can mean nothing other than ownership of intellectual property, despite the absence of that legal term. An IP regime that provides the general public access to and benefits from innovative works while also protecting the ownership of those works meets the criteria of these instruments.

(5) **Universal Declaration on the Human Genome:** “States should take appropriate measures to foster intellectual and material conditions favorable to freedom in the conduct of research.” (Article 14)

Interestingly, the Universal Declaration on the Human Genome goes beyond the protection of intellectual property, and insists that states have an active obligation to create climates that reward creativity and encourage innovation.

Finally, given the debate this past year over a proposed “Development Agenda” for the World Intellectual Property Organization (WIPO), the following international agreement should be of particular interest:

(6) **Vienna Declaration and Programme of Action:** “While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.” (1993, Part One, Paragraph 10)

Remember, the right to the ownership of one’s discoveries and creations is a human right under the agreements we’ve cited. So according to the Vienna Declaration, intellectual property protection *may not be infringed because of a lack of development.*

WHAT ABOUT THE PUBLIC GOOD?

While all of these documents contain clear language protecting the rights of the authors and inventors, they also contain language that insists on the dissemination of information and of the benefits from innovation to the general public.

There is very little tension between intellectual property protection and the dissemination of information. IP regimes have emerged that successfully create a balance between the rights of owners and public benefit.

For example, the public is not deprived of patented goods—in fact, it is precisely the patent that encourages the development and distribution of the patented good. In this way, patents obviously result in public benefit. Additionally, there is an obligation in all patent laws to describe the invention publicly so all may learn from it

and, following the expiration of the patent, others are free to produce the invention themselves.

Similarly, copyright protection promotes the creation and distribution of the protected good and is time limited. But copyright is additionally subject to “fair use” limitations. And while there may be differences of opinion and differences in law about what constitutes fair use, all copyright regimes recognize it.

A TOOL OF HUMAN RIGHTS

In fact, intellectual property rights further the extension of other human rights, such as political speech, health care and education. It was copyright that took publishing out of the hands of governments and monarchs and enabled the free published expression of individual authors and publishers.

It is undeniable that new pharmaceuticals improve health care, or that expansive publication improves education. And it is precisely the implementation of intellectual property protection that has resulted in widespread creation and distribution of new pharmaceuticals and the expansion of publication.

CONCLUSION

IP protection has long been recognized as a basic human right, and the tension between the rights of the creators and the rights of consumers has been successfully resolved by the development and modification of intellectual property protections over the years.

Those who want to weaken IP protections are really tapping into a failed and discredited economic theory that the public doesn’t benefit from privately owned goods. However, expropriation of others’ property not only undermines creation and invention, it also undermines economies and societies. It is, ironically, one of the most “anti-human rights” actions governments could take.

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