OBJECTIVES AND TYPES OF INTELLECTUAL PROPERTY RIGHTS

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Abstract

Intellectual property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

Generally speaking, intellectual property law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use made of those productions. Those rights do not apply to the physical object in which the creation may be embodied but instead to the intellectual creation as such. Intellectual property is traditionally divided into two branches, "industrial property" and "copyright."

Keywords: intellectual property, copyright, law, etc.,

Introduction

This work responds to the increasing need in many countries to better understand linkages between intellectual property, trade rules, and economic and social development, and to find new ways of implementing intellectual property rules and optimizing their effects. It provides a comprehensive analysis of the latest legal, economic, political and social research and advanced current thinking on the relationship between intellectual property and trade and development. With new chapters addressing access to educational resources and innovation in the developing world, the use of traditional knowledge as a source of innovation, and TRIPS, TRIPS Pus and Developments across the whole of South Asia, this fully updated second edition presents new insights and discussions from economists and social scientists and benefits from access to the latest metrics and analytical tools available.

Object of intellectual property law

The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods for consumers. To achieve this, the law gives people and businesses property rights to the

information and intellectual goods they create, usually for a limited period of time. Because they can then profit from them, this gives economic incentive for their creation.[5] The intangible nature of intellectual property presents difficulties when compared with traditional property like land or goods. Unlike traditional property, intellectual property is indivisible – an unlimited number of people can "consume" an intellectual good without it being depleted. Additionally, investments in intellectual goods suffer from problems of appropriation – while a landowner can surround their land with a robust fence and hire armed guards to protect it, a producer of information or an intellectual good can usually do very little to stop their first buyer from replicating it and selling it at a lower price. Balancing rights so that they are strong enough to encourage the creation of information and intellectual goods but not so strong that they prevent their wide use is the primary focus of modern intellectual property law.

By exchanging limited exclusive rights for disclosure of inventions and creative works, society and the patentee/copyright owner mutually benefit, and an incentive is created for inventors and authors to create and disclose their work. Some commentators have noted that the objective of intellectual property legislators and those who support its implementation appears to be "absolute protection". "If some intellectual property is desirable because it encourages innovation, they reason, more is better. The thinking is that creators will not have sufficient incentive to invent unless they are legally entitled to capture the full social value of their inventions "This absolute protection or full value view treats intellectual property as another type of "real" property, typically adopting its law and rhetoric. Other recent developments in intellectual property law, such as the America Invents Act, stress international harmonization. Recently there has also been much debate over the desirability of using intellectual property rights to protect cultural heritage, including intangible ones, as well as over risks of commoditization derived from this possibility. The issue still remains open in legal scholarship.

Financial incentive

These exclusive rights allow owners of intellectual property to benefit from the property they have created, providing a financial incentive for the creation of an investment in intellectual property, and, in case of patents, pay associated research and development costs. In the United States Article I Section 8 Clause 8 of the Constitution, commonly called the Patent and Copyright Clause, reads; "[The Congress shall have power] '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.' "Some commentators, such as David Levine and Michele Boldrin, dispute this justification

In 2013 the United States Patent & Trademark Office approximated that the worth of intellectual property to the U.S. economy is more than US $5 trillion and creates employment for an estimated 18 million American people. The value of intellectual property is considered similarly high in other developed nations, such as those in the European Union. In the UK, IP has become a recognized asset class for use in pension-led funding and other types of business finance. However, in 2013, the UK Intellectual Property Office stated:

"There are millions of intangible business assets whose value is either not being leveraged at all, or only being leveraged inadvertently"

Economic growth

The WIPO treaty and several related international agreements underline that the protection of intellectual property rights is essential to maintaining economic growth. The *WIPO Intellectual Property Handbook* gives two reasons for intellectual property laws:

One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

The Anti-Counterfeiting Trade Agreement (ACTA) states that "effective enforcement of intellectual property rights is critical to sustaining economic growth across all industries and globally"

Economists estimate that two-thirds of the value of large businesses in the United States can be traced to intangible assets. "IP-intensive industries" are estimated to generate 72 percent more value added (price minus material cost) per employee than "non-IP-intensive industries".

A joint research project of the WIPO and the United Nations University measuring the impact of IP systems on six Asian countries found "a positive correlation between the strengthening of the IP system and subsequent economic growth.

Morality

According to Article 27 of the Universal Declaration of Human Rights, "everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author".[45] Although the relationship between intellectual property and human rights is a complex one, there are moral arguments for intellectual property.

The arguments that justify intellectual property fall into three major categories. Personality theorists believe intellectual property is an extension of an individual. Utilitarian's believe that intellectual property stimulates social progress and pushes people to further innovation. Lockeans argue that intellectual property is justified based on deservedness and hard work.

Various moral justifications for private property can be used to argue in favor of the morality of intellectual property, such as:

Natural Rights/Justice Argument

This argument is based on Locke's idea that a person has a natural right over the labour and/or products which is produced by his/her body. Appropriating these products is viewed as unjust. Although Locke had never explicitly stated that natural right applied to products of the mind, it is possible to apply his argument to intellectual property rights, in which it would be unjust for people to misuse another's ideas. Locke's argument for intellectual property is based upon the idea that labourers have the right to control that

which they create. They argue that we own our bodies which are the labourers, this right of ownership extends to what we create. Thus, intellectual property ensures this right when it comes to production.

Utilitarian-Pragmatic Argument

According to this rationale, a society that protects private property is more effective and prosperous than societies that do not. Innovation and invention in 19th century America has been attributed to the development of the patent system. By providing innovators with "durable and tangible return on their investment of time, labour, and other resources", intellectual property rights seek to maximize social utility. The presumption is that they promote public welfare by encouraging the "creation, production, and distribution of intellectual works". Utilitarian's argue that without intellectual property there would be a lack of incentive to produce new ideas. Systems of protection such as Intellectual property optimize social utility.

Personality Argument

This argument is based on a quote from Hegel: "Every man has the right to turn his will upon a thing or make the thing an object of his will, that is to say, to set aside the mere thing and recreate it as his own". European intellectual property law is shaped by this notion that ideas are an "extension of oneself and of one's personality". Personality theorists argue that by being a creator of something one is inherently at risk and vulnerable for having their ideas and designs stolen and/or altered. Intellectual property protects these moral claims that have to do with personality.

Lysander Spooner (1855) argues "that a man has a natural and absolute right—and if a natural and absolute, then necessarily a perpetual, right—of property, in the ideas, of which he is the discoverer or creator; that his right of property, in ideas, is intrinsically the same as, and stands on identically the same grounds with, his right of property in material things; that no distinction, of principle, exists between the two cases".

Writer Any Rand argued in her book *Capitalism: The Unknown Ideal* that the protection of intellectual property is essentially a moral issue. The belief is that the human mind itself is the source of wealth and survival and that all property at its base is intellectual property. To violate intellectual property is therefore no different morally than violating other property rights which compromises the very processes of survival and therefore constitutes an immoral act.

Infringement, misappropriation, and enforcement

Violation of intellectual property rights, called "infringement" with respect to patents, copyright, and trademarks, and "misappropriation" with respect to trade secrets, may be a breach of civil law or criminal law, depending on the type of intellectual property involved, jurisdiction, and the nature of the action.

As of 2011 trade in counterfeit copyrighted and trademarked works was a $600 billion industry worldwide and accounted for 5–7% of global trade.

Patent infringement

Patent infringement typically is caused by using or selling a patented invention without permission from the patent holder. The scope of the patented invention or the extent of protection is defined in the claims of the granted patent. There is safe harbour in many jurisdictions to use a patented invention for research. This safe harbour does not exist in the US unless the research is done for purely philosophical purposes, or in order to gather data in order to prepare an application for regulatory approval of a drug. In general, patent infringement cases are handled under civil law, but several jurisdictions incorporate infringement in criminal law also.

Copyright infringement

Copyright infringement is reproducing, distributing, displaying or performing a work, or to make derivative works, without permission from the copyright holder, which is typically a publisher or other business representing or assigned by the work's creator. It is often called "piracy".[While copyright is created the instant a work is fixed, generally the copyright holder can only get money damages if the owner registers the copyright] Enforcement of copyright is generally the responsibility of the copyright holder. The ACTA trade agreement, signed in May 2011 by the United States, Japan, Switzerland, and the EU, and which has not entered into force, requires that its parties add criminal penalties, including incarceration and fines, for copyright and trademark infringement, and obligated the parties to active police for infringement. There are limitations and exceptions to copyright, allowing limited use of copyrighted works, which does not constitute infringement. Examples of such doctrines are the fair use and fair dealing doctrine.

Trademark infringement

Trademark infringement occurs when one party uses a trademark that is identical or confusingly similar to a trademark owned by another party, in relation to products or services which are identical or similar to the products or services of the other party. In many countries, a trademark receives protection without registration, but registering a trademark provides legal advantages for enforcement. Infringement can be addressed by civil litigation and, in several jurisdictions, under criminal law.

Trade secret misappropriation

Trade secret misappropriation is different from violations of other intellectual property laws, since by definition trade secrets are secret, while patents and registered copyrights and trademarks are publicly available. In the United States, trade secrets are protected under state law, and states have nearly universally adopted the Uniform Trade Secrets Act. The United States also has federal law in the form of the Economic Espionage Act of 1996 (18 U.S.C. §§ 1831–1839), which makes the theft or misappropriation of a trade secret a federal crime. This law contains two provisions criminalizing two sorts of activity. The first, 18 U.S.C. § 1831(a), criminalizes the theft of trade secrets to benefit foreign powers. The second, 18 U.S.C. § 1832, criminalizes their theft for commercial or economic purposes. (The statutory penalties are

different for the two offenses.) In Commonwealth law jurisdictions, confidentiality and trade secrets are regarded as an equitable right rather than a property right but penalties for theft are roughly the same as in the United States.

Types of Intellectual Property Rights

The four types of intellectual property include:

- Trade Secrets
- Trademarks
- Copyrights, and
- Patents.

Trade Secret Protection

To identify the trade secrets in your idea, you need to understand the definition of a trade secret. A "trade secret" is any valuable information that is not publicly known and of which the owner has taken "reasonable" steps to maintain secrecy. These include information, such as a business plan, customer lists, ideas related to your research and development cycle, etc.

Trade secrets are not registered with a governmental body. All you need to do to establish your information as such is to treat it as a trade secret. Only those with a need to know should have access to your trade secret information. Disclosures should be done only under a nondisclosure agreement. When someone misappropriates your trade secret, you have to prove in a court of law that the information qualifies as your trade secret. You have to show that the information that was misappropriated was valuable because of its secrecy and you must show the steps you took to keep it secret. Put simply, the owner of the trade secret information must prove that the confidential information fits the definition of a trade secret given above.

Trade secret protection lasts until the information is no longer valuable, the information is not secret, or the owner no longer takes reasonable steps to maintain its secrecy.

Trade secret law specifically protects the *misappropriation* of trade secret information. This means that a wrongful or nefarious act must accompany the acquisition of the information. For example, if someone acting as an imposter steals trade secret information from its owner, the owner can sue the imposter for misappropriation of trade secrets. However, if the owner *voluntarily* gives trade secret information to an individual without limitation, there has been no misappropriation, and the owner cannot sue. It is also possible that the information may lose its status as a trade secret. This can occur if there has been a lack of reasonable effort to keep the information secret and/or the information is *de facto* no longer a secret.

When to protect your idea as a trade secret rather than securing a patent?

Most inventions start off as trade secrets which provide *short-term* protection prior to the marketing of your invention. Inventors are often initially cautious about revealing their inventions to others, even their patent attorney, and this is a good instinct to have.

Trade secret protection is not appropriate for the *long-term* protection of any ideas which can be readily ascertained by reverse engineering or for inventions that can be independently created. If the information can be reverse engineered or independently created, then there is no nefarious act. If there is no nefarious act that accompanies the acquisition of the information, there is generally no misappropriation or wrongful appropriation of the trade secret information. Generally, trade secret protection is not optimal for mechanical or software products since both utilize a user interface that is available to the public and can therefore be reverse engineered.

Trade secret protection may be optimal and sufficient for ideas and inventions that can be used secretly and therefore could be reverse engineered (e.g. recipes).

Trademark Protection

Your brand needs to be protected because you do not want to invest time and money only to find out later on that you have to switch to a different trademark because someone else already using your trademark. In this Trademarks protect brands. The name of the product associated with the product or a service is called the trademark. A trademark is anything by which customers can identify a product or the source of a product, such as a name associated with the product. Typically, that would be the words that you use to refer to your product or service. When the brand or trademark is made up of words, we refer to this as a word mark.

Other things can serve as your trademark. For example, sounds, colors, smells, and anything else that can bring the product and/or its owner to the minds of a consumer can serve as your trademark. The most common types of trademarks are wordmarks, logos, and slogans. If the product configuration (e.g. a Coca-Cola® bottle) or packaging (e.g. Tiffany's blue packaging) are non-functional and recall the product's maker (i.e. source of the product) for consumers, the configuration can be protected and registered as a trademark.

If you are starting out, protect the word mark first. Then, you can seek trademark protection for the other forms of trademarks if you have the available funds to do so and if it makes sense in your overall marketing and business strategy.

To properly protect your trademark, you should conduct a search to find out if others are using a similar mark to yours. If not, then file a trademark application to get your trademark registered.

The registration of a trademark was optional because you accrue trademark rights simply by using the mark in commerce. When you sell a product or perform a service under a brand, trademark law gives you common law trademark rights that you can assert against. Others in your small geographical region,

where also used the mark. Hence, to obtain trademark rights, you do not need to register your trademark but there are significant advantages for doing so such as nationwide rights and the right to block others from securing a registered trademark with the United States Patent and Trademark Office.

Copyright Protection

Most products have a copyright. The images and words on the product packaging, the label, the product itself and the webpage can all be protected with a copyright. The advantages of a copyright registration are that it is inexpensive to secure, and the law allows you to demand attorney fees from infringers. Often times, your attorney fees are more costly than your damages due to someone copying your images and words without your authorization. Hence, being able to demand your attorney fees from the infringer is a significant leverage that can be used to force infringers to settle early on in the legal process. Without a copyright registration, you would have to pay your own attorney fees.

Copyrights protect original works of authorship that are fixed in a "tangible medium of expression." This means that the authored or creative work has been written down on a piece of paper, saved on an electronic storage device (e.g. hard drive or flash drive), or preserved in some other tangible format. Examples of copyrightable works include movies, videos, photos, books, diaries, articles, and software. Copyright does not protect ideas or useful items, which is the function of patents. Although software is a functional item, it can be protected by copyrights due to the creativity used in the selection, ordering, and arrangement of the various pieces of code in the software.

We automatically have a copyrighted product in your creative expressions at the time that they are fixed in a tangible medium of expression. The copyright lasts for a very long time. For any work created on or after January 1, 1978, the term of copyright protection is the entirety of the author's life plus seventy years after the author's death. For works made for hire as well as anonymous and pseudonymous works, the duration of copyright is ninety-five years from publication or 120 years from creation, whichever is shorter.

A copyright does not need to be registered, but registration does have significant advantages. You can file your own copyright application at www.copyright.gov. Importantly, if your copyright is registered, your attorney fees can be shifted to the infringer as discussed above, and you can ask the judge to award statutory damages. Statutory damages allow a court to impose liability on an infringer for up to 150,000 dollars even if the damages are significantly less than that amount.

Patent Protection

Two types of patents may be obtained:

⇒ Utility (Function) and

⇒ Design (Aesthetic).

The following discussion will let you know how to identify which type of patent is optimal to protect your invention. Similar to the discussion above about securing multiple types of IP rights for your product or invention, you might be able to secure both a utility and design patent to protect your invention.

How to determine which type of patent is better for your invention?

If when you describe your invention to others, you describe the invention in terms of its *function* or *utility*, a utility patent application would be the best type of protection.

If the invention is described in terms of its *aesthetics*, a design patent application would be the best type of protection. The design patent protects the ornamentation, sculpture, pattern design, layout, and other aesthetic features of a product.

Sometimes, you will explain your product by using words that describe both function and aesthetics. In that case, you may be able to get both types of patents. However, if funds are limited, you may have to choose one of the two types of patents that is better suited for your invention. Seek competent patent counsel in this instance since a patent attorney would be best able to help you make the right decision.

Utility patent basics

To get a utility patent, you need to apply for a patent with the USPTO. If you start to market your product without applying for the patent, then eventually (i.e., after one year) your idea will be dedicated to the public.

The term for a utility patent is generally 20 years from the filing of your no provisional patent application and starts immediately when the patent office issues your patent.

Design patent basics

To get a design patent, you need to apply for a registration with the USPTO. If you start to market your product without applying for the registration, then eventually (i.e., after one year) your idea will be dedicated to the public. The term for a design patent is 15 years from the grant date of your design patent.

Conclusion

Intellectual property accounts for a growing share of firms' assets. It is more mobile than other forms of capital, and could be used by firms to shift income offshore and to reduce their corporate income tax liability. We consider how influential corporate income taxes are in determining where firms choose to legally own intellectual property. We estimate a mixed (or random coefficients) logic model that incorporates important observed and unobserved heterogeneity in firms' location choices. We obtain estimates of the full set of location specific tax elasticity’s and conduct ex ante analysis of how the location of ownership of intellectual property will respond to changes in tax policy. We find that recent reforms that give preferential tax treatment to income arising from patents are likely to have significant effects on the location of ownership of new intellectual property, and could lead to substantial reductions in tax revenue.

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