Intellectual Property

The Wiley-Blackwell Encyclopedia of Consumption and Consumer Studies
(2015)

Ove Granstrand
Department of Technology Management and Economics
Chalmers University of Technology
ovegra@chalmers.se

Marcus Holgersson
Institute for Innovation and Entrepreneurship
University of Gothenburg
marhol@chalmers.se

Word Count (incl. reference list): 1058

Abstract (for web version):
A property can be defined as a resource with some form of assigned ownership, and an intellectual property is then a property of intellectual or intangible character. An intellectual property right (IPR) is a legally codified right created and used to assign ownership to intellectual resources such as knowledge, technologies, brand names, and other types of intellectual creations. The family of IPRs includes *patent rights*, *copyrights*, *design rights*, *trademark rights*, *trade secret rights*, and some other types of ancillary rights. IPRs are granted mainly to incentivize investments in creation and commercialization of new intellectual resources in order to improve the provision of innovations of various kinds to the benefit of consumers and society in general. However, IPRs have received critique not only for creating monopoly distortions but more recently also for counteracting innovativeness due to their increasingly dispersed exclusionary function. Nevertheless various IPR laws have become adopted more or less worldwide.

Main text:
A property can be defined as a resource with some form of assigned ownership, and an intellectual property is then a property of intellectual or intangible character. An intellectual property right (IPR) is a legally codified right created

and used to assign ownership to intellectual resources such as knowledge, technologies, brand names, and other types of intellectual creations.

IPRs constitute a family of temporary, restricted, and transferrable or licensable rights to exclude others from commercializing someone's intellectual or intangible creations or inventions under certain conditions. The main types of IPRs are *patent rights* to technical inventions, *copyrights* to creations in various arts (including software as a kind of border case), *design rights* to physical artistic and handicraft forms or designs, *trademark rights* to signs, designs, identity marks or expressions that identify a certain entity, product, or service, and *trade secret rights* to trade secrets. Other types are for example *database rights* and *breeding rights*.

An intellectual creation typically has at least to be new and distinctive to qualify for IPR protection. Different legal frameworks apply to different IPRs, and these to some extent vary over time and across countries, for example in terms of legal strength and enforceability against infringers and counterfeiters. As an example, the legal framework for patents typically stipulate that in order for an invention to be patentable, it has to be new to the world, non-obvious to a person skilled in the technological area in question, and applicable or useful at least to some people.

Most IPRs are temporary by statutes. For example, the maximum lifetime is 20 years for patents (with some exceptions), 50 to 100 years after the creator's death for copyrights, and 14 (US) to 25 (Europe) years for design rights. Trade secret rights differ in that they are unregistered and could be kept indefinitely (although they could also leak quickly), and trademark rights differ in that they could be prolonged indefinitely by renewing them. Thus, trademark rights and their associated brand values could become very valuable over time, such as the Apple brand, which has been valued to 98 BUSD (Interbrand 2013).

IPRs are granted mainly to incentivize investments in creation and commercialization of new intellectual resources, and to incentivize the disclosure of informational resources (trade secret rights being an exception). In other words various IPRs are granted in order to improve the provision of innovations of various kinds to the benefit of consumers and society in general, a society that is thereby being served by self-interested innovators in the spirit of a capitalist economic institution. IPRs are justified mainly on this type of utilitarian grounds, although they may in addition be justified on moral grounds (e.g., that creators should have entitlement to the fruits of their creative labor). Trademarks, as a special case, are also justified for their ability to communicate information and images to the public at large and thereby also to help protect consumers from being misled about the origin or quality of a product or service.

The desired economic benefits of IPRs do not come without costs, however. The classical critique of IPRs, patent rights in particular but also copyrights, is that

they give too strong competitive advantages, leading to monopolistic behavior (e.g., high prices) and inefficient static competition with ensuing losses for consumers as well as for the society at large. The counterargument is that, given properly balanced IPRs, the temporary loss of static competitive efficiency is outweighed by gains in dynamic efficiency in form of an increased flow or supply of innovations to the benefit of consumers. This counterargument is in turn increasingly challenged, see below.

Historically, traces of the use of and rights to trademarks and secrecy arrangements go back thousands of years. Plagiarism and distortion of literary works were reacted against in ancient Greece. However, patent-like arrangements did not really appear until the 14th and 15th centuries, with the first codified patent laws in Venice 1474. The following centuries saw the introduction and adoption of laws, statutes, and ordinances for different IPRs in various countries (e.g., patent laws were adopted 1623 in England, 1790 in the US, 1871 in Japan, and 1984 in China). More recently, a so-called pro-patent era started in the US in the early 1980s, and then spread to other industrialized countries, making IPR issues a key concern for business strategy and government policy. The US-sponsored Agreement on Trade-Related Aspects of IPRs (TRIPS) in the mid-1990s further spread, strengthened, and harmonized the IPR regimes almost all around the world, contributing to vast increases in numbers of IPRs applied for and granted. In 2013 more than two million patent applications and more than four million trademark applications were filed worldwide.

The strengthening of IPR systems has also strengthened old as well as new types of legal, economic, and political critiques targeted at various IPR types, patents and copyrights in particular, for being counterproductive, inferior to alternatives, and prone to political capture by corporate interests and industrialized countries. IPRs restrict the *freedom to operate* for others than the owners and legitimate users. The restrictions have traditionally applied to the operations of making, selling, and using goods and services protected by IPRs, but increasingly apply also to the operations of creation and invention, thereby counteracting their intended functions. A number of reforms and other remedies have been proposed and practiced, including the use of so called *fair, reasonable, and non-discriminatory* (FRAND) commitments in the patent area, *creative commons* in the copyright area, and *open design* in the design area. Many if not most of these remedies are essentially schemes for licensing IPR usage rights. In general, well-functioning license markets are essential to the well-functioning of IPR systems for provision of innovations. Trade and transfer of dispersed complementary intellectual resources are needed since contemporary innovation is increasingly cumulative, open, distributed, multi-technological, systemic, and IPR intensive.

SEE ALSO: Apple; brand loyalty; brands and branding; capitalism; counterfeit / pirate; economy, moral aspects of; licensing; open sourcing; peer-to-peer file sharing.

REFERENCES AND SUGGESTED READINGS

Granstrand, Ove. 1999. *The Economics and Management of Intellectual Property: Towards Intellectual Capitalism*. Cheltenham: Edward Elgar Publishing.

Interbrand. 2013. *Best Global Brands 2013*. Interbrand.

Jaffe, Adam B. and Josh Lerner. 2004. *Innovation and its Discontents: How our Broken Patent System is Endangering Innovation and Progress, and What to Do about it*. Princeton, NJ: Princeton University Press.

Lessig, Lawrence. 2001. *The Future of Ideas: The Fate of the Commons in a Connected World*. New York: Random House.

Merges, Robert P. 2011. *Justifying Intellectual Property*. Cambridge, MA: Harvard University Press.