Who Owns Ideas?  
An Introduction to Intellectual Property  

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1. The importance of ideas
2. The institution of Intellectual property law
3. Justifying IP
4. Assumptions about creativity
5. Assumptions about copying
6. Recalibrating IP
7. Conclusion
1. The importance of Ideas

- “Ideas” ➔ Proxy for Creativity & Inventiveness
  - Raw material for culture; technology
  - Circulate within the market

- The importance of ideas
  - Identity & Expression
  - Democracy (marketplace of ideas; better ones win)

- Encouraging and sustaining their production through (legal) institutions
2a. What is IP?

The Concept of Intellectual Property

1.1 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.
2b. Cont.

1. Rules which regulate the
   • Creation
   • Use
   • Exploitation
   Of products of mental/creative labour or investment

2. Recognise and protect (valuable) intangibles, by granting property rights over ideas, inventions, signs & information
2c. Main Categories

- Patent
- Copyright
- Trade Mark
2d. Patents

Grant temporary protection to new technological inventions

Important for: Biotechnology, pharmaceuticals, chemicals, electronics

Also covers not just new products but processes
2e. The ‘smooth criminal’ shoes - 45° dance moves

A system for engaging shoes with a hitch means to permit a person standing on a stage surface to lean forwardly beyond his or her center of gravity, comprising:

at least one shoe having a heel with a first engagement means, said first engagement means comprising a recess formed in a heel of said shoe covered with a heel slot plane located at a bottom region of said heel, said heel slot plane having a slot formed therein with a relatively wide opening at a leading edge of said heel and a narrower terminal end rearward of said leading edge, said recess being larger in size above said terminal end of said slot than is said terminal end of said slot; and
2f. Copyright

Grants (a) longer protection to Literary, Dramatic, Musical and Artistic works and (b) has shorter protection for related rights (e.g. broadcasting; performers rights)

Relevant for culture industries
2g. Trade Marks

- Protect signs against harmful imitation, so long as they are used in trade.
- Main infringement test: prevent consumer confusion; preserve origin signalling ability.
3a. Intellectual v Real Property

How many people can occupy a chair v. how many people can whistle the same tune?
Can it be shared?
Will the sharing diminish or deplete the original?

Then why protect intangibles with property rights?

Copying is not Theft (False analogy with physical property)

http://www.youtube.com/watch?v=IeTybKL1pM4&feature=fvwrel
3b. The difference…

Q. Have you ever downloaded material which you suspect may be infringing copyright (music, films etc)?

Q. Have you ever physically shoplifted CDs or DVDs?
3c. An artificial monopoly?

- Is IP a monopoly or a state sanctioned privilege?
- Interference with Liberty? (Liberal political theory)
- Therefore need to justify IP
- Justifications rely on parallels with real/physical property (land; chattels)
3d. Justifications

Deontological justifications
- Arguments from Creation; Desert; Personhood; Autonomy e.g. Locke’s labour theory

Consequential (instrumental) justifications
- We want more books, films, inventions etc
- As an incentive to create works (if anyone can copy freely, creators will just give up in despair)
- As an incentive to market/distribute works (carrot for the venture capitalists/publishers)
4. Assumptions about creativity

A. Why do we create?

B. How do we create?
4a. Creativity over time

- How we perceive creators – changes over time
  - Author as vessel (Divine Inspiration/Muses)
  - Author as artisan/craftsman (Within a tradition)
  - Romantic Authorship (“Genius”)
    - The ‘independent’ creation of original ideas or texts
    - ‘An “author” in the modern sense is the creator of unique literary, or artistic, “works” the originality of which warrants their protection under laws of [IP] — Anglo American “copyright” and European “authors’ rights”’ (Woodmansee).

- Individual or Collaborative Activity?
4b. Collaborative creativity


http://www.topnews.in/light/people/j-k-rowling
4c. Collaborative models taken seriously – Wikipedia etc

The Crowdsourcing Process

*In Eight Steps*

1. Company has a problem
2. Company broadcasts problem online
3. Online “crowd” is asked to give solutions
4. Crowd submits solutions
5. Crowd vets solutions
6. Company rewards winning solvers
7. Company owns winning solutions
8. Company profits

Image by Darren C. Brabham | www.darrencbrabham.com

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4d. Why do people make things?

Researching Creativity


- How is the impulse to create related to availability of IP?
  Interviews within creative industries
- Motivations: intellectual challenge, personal interest; recognition; contributing social value; curiosity
- Beginnings of creative endeavours
  - Serendipity or luck
  - Intrinsic forces (inevitability of a discovery)
  - Play and pleasure (joy of exploration)
  - Need or urgency (problem solving)
  - *Availability of IP only a factor in subsequent commercialisation*
5. Assumptions about copying

A. Is copying always undesirable?

B. What are the circumstances under which we copy and to achieve which goals?
5a. Desirable copying & referencing

1. We copy to learn
2. We copy (raw material) to create new works
3. We copy to develop genres (enrich culture)
4. We copy to compete
5. We copy to critique or comment (parodies; ad-jamming)

http://www.jamieandrew-withhands.com/2012/05/23/cj1/
5b. Do we create from scratch?  
– Shrek, for example

How many of these characters are entirely original?
5c. The Derivation of Mickey Mouse
5d. The internet – a copying engine?

The Digital Revolution and the Ease of Copying

Reduced costs and ease of both creation and distribution – how many of you have mobile phones with cameras?

Social Networks and File Sharing

Users as (re)creators
5e. Limited Rights

Recognising that we don’t create in a vacuum:
(a) Time limits
   Patent law (20 yrs)
   Copyright (Life + 70 yrs)
(b) Limits on subject matter (Ideas not protectable but expression is)
(c) Scope of infringement
(d) Defences (News reporting, Parody)
6. Rethinking the balance

Larry Lessig, *Free Culture* (xiv)

‘A free culture supports and protects creators and innovators… A free culture is not a culture without property, just as a free market is not a market in which everything is free. The opposite of a free culture is a “permission culture”—a culture in which creators get to create only with the permission of the powerful, or of creators from the past.’
6a. Future directions

System designed within a particular historical context (production and distribution of creative works) – developments such as the internet have changed that.

E.g. of Copyright:

Is the ‘sky falling’ for content industries (illegal downloads)?

Is the goal to encourage artists/creators or to preserve particular forms of business?
6b. Signs of Change

- *Free – The Future of a Radical Price* (Search engines; newspapers)
- Levies on recordable media
- New business models – e.g. iTunes; buying songs instead of albums
- Lobbying for legal reform – ‘upgrade’ the law; make it stricter
- Think differently about possibilities within the law (creative commons)
7. Conclusion: Balancing Interests

- We (probably) need some IP protection to incentivize the generation and distribution of creative/inventive works.
- Sunder: IP laws ‘have profound effects on human capabilities, what Amartya Sen and Martha Nussbaum define as what people “are actually able to do and be.”’
- In a global Knowledge Economy, IP distributes wealth and power and affects global justice.
- So a need to recalibrate and rethink...