



Are IPRs good for the World?

The 26th of April is World Intellectual Property Day, and so it is a suitable time to step-back and examine intellectual property from afar.

To the modern person, intellectual property rights are all pervading, especially in the current pandemic: from patents for vaccines to help fight diseases, via trade marks to distinguish all the luxuries that have been consumed to alleviate the boredom, and to copyright protecting all the mini-series that have been metaphorically consumed from various streaming service providers.

To the modern IP lawyer, those three rights, while very important, are only a selection of the vast armada of potential rights that might arise and can be invoked to protect a person's intangible assets. Over the years, many new rights have been created: some closely associated with the traditional rights, for example plant varieties, geographical indications and design right; some are *sui generis* such as the semiconductor topology right, database right, publication right, resale right and data exclusivity; while others augment existing rights such as performance rights and supplementary protection certificates; while yet others arise from the intervention of the common law, equity or even civil law, such as passing-off, confidential information and moral rights. It is commonly asserted that for the modern company those intangible, intellectual property rights are more valuable than the tangible, physical assets such as buildings and machinery.

Yet, the existence of all those rights can add enormous complexity. For example, a 3D object might benefit from protection conferred by patents, trade marks, passing-off, copyright and design right. The latter right is a particularly crowded area, with the existence of registered and unregistered rights, and now post-Brexit of "continuing" and "supplementary" unregistered designs.



This is all a lawyer's dream – complicated law for which a premium may be charged when advice is sought, or enforcement is contemplated, by a lay client.

However, is this good for the lay client?

Is this good for the economy?

Is this good for society as a whole?

While many might answer each of those questions firmly and promptly in the affirmative, it behoves one to recall that other answers have been, and are, taken seriously. For example, it is only comparatively recently that patent protection was standard for medicines. The issue still arises today, when countries consider that they should not pay the monopolistic prices charged for essential pharmaceuticals that are required to prevent or mitigate outbreaks of diseases within their country and so save the lives of its citizens.

Further, the web of possible protection that can be spun around any product can hinder competition, because it becomes too expensive to ensure that no-one's rights have been violated. Does the economy then suffer as a result of the competition being stifled? This is a live issue when companies create a thicket of rights around their crown jewels, for example worldwide and numerous speculative trade mark registrations that clutter the register and so leave fewer options available for new entrants to adopt.

Moreover, what about the wider point that everything is derivative in any event



and progress only occurs incrementally by building on previous works? In the rag trade, there is a widely held misconception that if five changes were made to a dress design, then any new design would not infringe the source of the inspiration. Regardless of the reliability of that apocryphal advice, it is true that fashions come around again and again, much to the amusement of parents recycling their glad rags to their offspring, and so progress is not necessarily linear, but might be circular.

Likewise, can the exploitation and enforcement of these rights by some lead to societal problems? For example, do the large social media and on-line traders command too much power? Again, such issues are in the news as Google challenges the Australian government over payment to include links to other material; Facebook is accused of knowing too much about the lives of its users; and Amazon is repeatedly accused of being a platform for counterfeiters and pirates.

There are many reasons why intellectual property rights benefit the creators, inventors and traders that enrich every filament of our culture and commerce. However, it is still apposite to step back and consider the consequences of those rights and where and how the best balance should be struck for the good of the world and its people at large.

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