

PROGRESS AND SHORT-COMINGS OF INTELLECTUAL PROPERTY IN DEVELOPING COUNTRIES

Marin DOMENTE, Universitatea de Studii Politice și Economice Europene “Constantin Stere”,
bd. Ștefan cel Mare și Sfint 200, mun. Chișinău, Republica Moldova

Abstract: One purpose of the intellectual property rights system is to provide incentives to innovators to produce new inventions and creations. This in turn provides society with a steady stream of innovations that fuel economic, cultural and social progress, help to alleviate poverty and disease, and enrich our cultural heritage.

Changes brought about by the globalization of laws and markets, and the geometric expansion of technological innovation, make intellectual property issues nebulous and mercurial, to the point that keeping pace with changes in the field is a full-time pursuit requiring a high degree of skill and dedication. For nations-within-nations, as is the status of most Native groups worldwide, intellectual property presents a particularly difficult legal and political problem, as indeed intellectual property rights regimes challenge the sovereignty of even the strongest and most ‘modern’ of nation states.

Intellectual creation, knowledge in general, raised many controversies about appropriate ways of defining, regulating and fair use, given the fundamental difference between good idea and tangible, and failure to comply with the rules of classical legal interpretations. Specialty literature considered that acceptance of intellectual property concept meant, in reality, the triumph of progress reasons, which were the basic arguments in favor of a legal instrument to recognize the private ownership of a certain amount of knowledge / information. Moral issues raised with the advent and development of this concept is the acceptance of a need of knowledge protection, generally parallel with the need to ensure access to it. Ambivalent effects of intellectual property protection system is widely recognized and increasingly shows its correlation with technological progress. It accepts the social cost paid by the public by limiting the dissemination of information and economic incentives to creators of knowledge within a legal system built to provide stability to those involved in the creation, thought to bring much more significant benefits than costs mentioned above.

Various forms of intellectual property that it embraces always wear based on social interests, which function as agents of change, according to the need of constant renewal of life that increases the future economic and intellectual property rights fund. In addition, intellectual property involves many issues in which we interact with information. Some of them were regulated and subject to national standards, with testing and even achievements in the multilateral framework, while others barely make their entry in the category of intellectual property rights, as they require such practice. Lately, systematically appear the issue regarding the protection of new forms of intellectual property, with influence in everyday life, and require adequate protection (folklore, traditional knowledge, genetic material). The potential economic gain is the origin of the study of traditional concepts of knowledge,

folklore, genetic material and tends to transform them to copyrighted and internationally recognized intellectual property rights.

Intellectual-property rights have the following unfortunate side effects:

(1) They are costly to administer. The establishment and maintenance of patent registration systems, the staffing of courts to interpret and enforce entitlements, and the employment of lawyers first to obtain and then to protect entitlements – all of these things consume substantial social resources.

(2) Intellectual-property rights sometimes impede cumulative innovations. Suppose Innovator #2 wishes to build upon the work of Innovator #1. The need to secure a license from Innovator #1 will, at a minimum, add to Innovator #2’s costs. If, for some reason, Innovator #1 is unable or unwilling to grant the license, the work of Innovator #2 may be frustrated altogether.

(3) By empowering innovators to charge consumers more than the marginal cost of replicating their innovations, intellectual-property rights have the unfortunate effect of pricing some consumers out of the markets for the goods produced with those innovations. The result is a loss of the consumer surplus that otherwise might have been reaped by those consumers.[1]

Recognition of these drawbacks suggests that intellectual-property rights should not be created and extended casually. Instead, they should be established only in contexts in which their benefits (in terms of stimulating productivity) exceed their concomitant social costs. That basic insight has guided many scholars’ efforts to determine the optimal scope of intellectual-property rights. A classic study of this sort is William Nordhaus’ effort to determine the optimal duration of patent rights. Each increase in the duration or strength of patents, Nordhaus observed, stimulates an increase in inventive activity. The resultant gains to social welfare include the discounted present value of the consumer surplus and producer surplus associated with the distribution of the intellectual products whose creation is thereby induced. At the same time, however, social welfare is reduced by such things as larger administrative costs and larger deadweight losses associated with the higher prices of intellectual products that would have been created even in the absence of the enhanced incentive. Ideally, patent duration or strength should be increased up to the point where an additional extension would generate more social costs than benefits.[2] Other analyses in the same vein include Louis

Kaplow's efforts to locate the optimal boundary between patent law (which permits and encourages the exercise of monopoly power) and antitrust law (which forbids it) – and my own effort to suggest how the fair-use doctrine in copyright law might be reshaped.[3]

Many years ago, Harold Demsetz argued that the copyright and patent systems play the important roles of letting the potential producers of intellectual products know what consumers want and thus channeling productive efforts in directions most likely to enhance consumer welfare.[4]

The basic conclusions can be summarized as follows. First, there is growing evidence that intellectual property affects state decisions around the world; empirical evidence of the overall strength of this effect is not, however, conclusive.

Second, although the channels through which intellectual property influence state decisions are many and quite complex-given the interaction between trade, laws and technology transfer decisions-the basic presumption is that countries with stronger intellectual property regimes will be in a better position.

Developing countries engaged in the process of reforming their intellectual property regimes must recognize that changes in substantive laws are just the

first step in this process. Unless adequate resources are committed to the administration and enforcement of intellectual property rights and entrepreneurs become convinced of the sustainability of these new regimes, intellectual property reforms will fall short of their potential. The fact that many developing countries are now reforming their intellectual property regimes offers a unique opportunity for “before” and “after” studies. Moreover, further studies about the linkages between intellectual property and the different modes of knowledge-should be a priority.

Bibliography:

1. William Fisher, *New Essays in the Legal and Political Theory of Property*, Cambridge Univ. Press, 2001
2. William D. Nordhaus, *Invention, Growth, and Welfare: A Theoretical Treatment of Technological Change*, Cambridge, M.I.T. Press, 1969
3. Frederic M. Scherer, *Industrial Market Structure and Economic Performance*, 2d ed., Chicago, Rand McNally, 1980, pp. 439-458
4. Harold Demsetz, *Information and Efficiency: Another Viewpoint*, *Journal of Law and Economics*, 12, 1, 1969