



Free markets. Real solutions.

R SHEET ON PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY POLICY

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BACKGROUND

Patents and copyrights, two forms of “intellectual property,” give artists and inventors a limited exclusive period to profit off of their inventions or works without others copying them. During the term of the award, the owner has substantial power to stop others from copying or misappropriating the patented invention or copyrighted work. Used correctly, they are a win-win: Creators receive the economic reward and this encourages further invention, innovation and artistry.

But, like other government-created programs, patents and copyrights are frequently abused. Indeed, ever since they were first awarded centuries ago, the holders of these rights have sought to make their monopoly powers more powerful and easier to obtain. Consider the length of the copyright term: In 1790, it was 28 years. Today, it has increased to 70 years plus the lifetime of the author.

The strength of intellectual property laws often bears no correlation with public interest and therefore can be costly. Excessive granting of software patents in the 1990s, for example, led to a wave of so-called “patent troll” litigation that sapped billions of dollars in attorney fees from the technology industry. Copyrights are also often used to suppress speech and criticism, such as when businesses assert copyrights to demand the removal of bad reviews online.

Most troublingly, excesses in patents and copyrights can suppress the development of new inventions and creative work, and this is the opposite of what intellectual property law is supposed to do. Studies find that startups will quit the business of innovation when faced with patent assertions—even seemingly frivolous ones—because the costs of defense are high and the litigation game is stacked against them. Copyright owners have consistently sought to suppress new technologies—the Internet, VCR, radio, even the player piano—to preserve existing business models that quickly prove to be outdated.

Certainly, some degree of interference with the free market is to be expected. After all, as government benefits,

SUMMARY

- Patents and copyrights are important government programs for stimulating invention and creativity but can be abused, which harms the public and stifles productive innovation.
- R Street seeks to promote balanced patent and copyright systems that can both protect the value of intellectual property and avoid abuses.
- With respect to patents, R Street is specifically focused on patent examination quality, the International Trade Commission and software patents.
- Regarding copyrights, R Street focuses on online intermediary liability and effects on new technologies.
- Regarding open source and open data, R Street believes that increasing flexibility within data licensing regimes—both on the private and public levels—will encourage the growth of private enterprise and civic engagement.

patents and copyrights are inherently alterations to ordinary market operations. But holders of these benefits have frequently exploited that marketplace interference to the detriment of everyone else and it has become apparent that reform is necessary.

R STREET'S PERSPECTIVE

R Street's objective in the intellectual property space is to foster a balanced debate that accounts for the interests of everyone in a diverse innovation economy. While we believe that the rationale for intellectual property is commendable, we seek to prevent abuses of patents and copyrights as we eliminate systemic problems that enable such abuses.

KEY POLICY ISSUES

Although R Street works on many facets of patent and copyright policy, the following is a sampling of areas in which we have been particularly active in policy circles and where we have substantial expertise.

Patent Examination

In the fight against low-quality patents that stifle startups and innovative businesses, the first line of defense is the U.S. Patent and Trademark Office, which examines applications for patents. Given the time and financial constraints faced by the agency, compounded with one-sided lobbying pressure from patent attorneys and owners, there is a need to present balanced perspectives on patents before the Office.

The International Trade Commission (ITC)

Derived from the Smoot–Hawley Tariff Act of 1930, this federal agency has a unique power to police the importation of patent- and copyright-infringing products at the border. There is growing concern, however, that the ITC oversteps its bounds, effectively becoming a generalized, quasi-patent court, which is a problematic result given its rules and procedures that in many ways favor patent owners.

Intermediary Liability

Copyright has proven to be a powerful tool for suppressing online content and regulating the behavior of Internet companies, often for reasons that have nothing to do with actual protection of creative works. Left unchecked, these abuses of copyright threaten the viability of the Internet as an open forum for dialogue and as a platform for innovative technologies.

Software Patents and Copyrights

Immense economic and technological growth have come out of the open market for software products and services but overbroad protection of intellectual property in the software space threatens to grind that to a halt. Accordingly, settling questions about the subject matter eligibility of software patents and the ability to copyright software interfaces is important to continued technological innovation.

Emerging Technologies

Patents and copyrights can dramatically shift the development and adoption of new technologies. For example, there are questions as to whether copyrights will make it more difficult to obtain training sets for machine-learning applications, impeding AI research. Intellectual property policy must ensure both that it protects the interests of past creators and that it provides space for future technologies.

MOVING FORWARD

An important part of achieving balanced intellectual property law is reminding policymakers of the startups, technologists, hobbyists, artists and other creators whose voices are often insufficiently represented in these discussions. Much of these constituencies' work is rendered impossible when patents or copyrights become too powerful. The remixer or collage artist cannot create when their source pieces are unusable due to copyright. The startup cannot build new technologies when someone is indiscriminately asserting a questionable patent directed to broad concepts of basic technology (displaying a restaurant menu on a computer screen, as one real-world example). The open-source software community makes valuable contributions to the software economy, but stands to be impeded rather than encouraged by overly forceful assertions of intellectual property.

Thus, in order to achieve policy that encourages creativity and invention as much as possible, we seek to build diverse coalitions to promote balanced patents and copyrights that account for this wide variety of innovators and creators of all stripes.

CONTACT US

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