

IP, Jobs, and the Economy

Resisting populist calls for a wind back of IP laws and showing leadership in the promotion of IP laws

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The global threat to IP laws

- Parliaments, Courts and law enforcement are under pressure from populist calls for reforms to IP laws to introduce more “balance” and expanded rights of use.
- Witness the extraordinary response to ACTA, the rise of the Pirate party, and the disregard for IP laws online – IP rights owners are blamed for infringing conduct.
- This is a threat to hundreds of years of jurisprudence, the rule of law, international treaties and legislation.
- The movement can be traced back to academic institutions, that have become dominated by historical revisionism and a monoculture of negative philosophy towards property.
- The challenges are part of a wider social agenda, with IP laws being the soft target for an attack effectively directed at private property and capitalism, which lacks the courage to seek legislative change in an open or transparent way.

IP rights have driven industrial development

- IP rights protect economic returns through creating private property rights.
- The public good was achieved by the incentives to create works, consistent with prevailing views of liberalism.
- Witness the rate of industrial and economic development in 300 years while IP laws have been in place.
- IP laws have delivered the certainty of economic returns that have justified the allocation of resources and effort to creation of works.

Statute of Anne 1709

An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned.

Whereas Printers, Booksellers, and other Persons, have of late frequently taken the Liberty of Printing, Reprinting, and Publishing, or causing to be Printed, Reprinted, and Published Books, and other Writings, without the Consent of the Authors or Proprietors of such Books and Writings, to their very great Detriment, and too often to the Ruin of them and their Families.

IP laws are rooted in democracy, private rights

- IP laws are closely related to the political and social shift to democracy in the 18th century.
- Liberalism and the assertion of democratic rights independent of state control and favour constituted the greatest move.
- IP rights were recognised in France, in the *Declaration of the Rights of Genius* (1793).
- The US Constitution recognised the power of the Congress to enact laws to “promote the progress of Science and useful Arts” by securing copyright for limited periods.
- IP rights are human rights under Art 15(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (1966) with signatories required to protect “moral and material interests resulting from any scientific, literary or artistic production”.
- The attempted wind back of IP rights is an attack on rights of personal property.

“Social contract”: an illusory justification to wind back

- There is a disturbing attempt to justify IP rollback by relying on a concept of “social contract” – a phrase that sounds attractive and learned.
- Several members of the High Court used a concept of “social contact” in the highly controversial *IceTV* case in 2009 to justify removing copyright protection in databases.
- The same concept was referred to by a judge of the Federal Court (Bennett J) when she in *Fairfax Media Publications v Reed International Books Australia* [2010] FCA 984.
- This concept has never been part of the law in Australia, or elsewhere, or in the IP treaties or in any discussion of the law for the last 300 years.
- Worse, the concept has been misunderstood and misapplied – Locke’s “social contract” involved the **recognition** of property rights including IP rights, based on the entitlement of creators who have invested their labours and deserve to reap returns.

Government should not be intimidated by the critics

- The digital economy depends on strong and consistent laws, to justify investment and encourage economic and technological development.
- Critics of IP laws have fuelled widespread disobedience of IP laws.
- There is a whole generation being misled into believing that they are entitled to infringe IP rights and that it is the rights owners who are responsible for this situation.
- The entitlement mentality is a morally and intellectually hollow foundation for policy.
- The evidence indicates that there are sections of society that have never purchased legitimate content, encouraged to believe that they have a right to take.
- There is a need for government to provide leadership and to reinforce, rather than undermine, existing laws that protect IP rights consistently with treaty obligations.

Conclusion

- IP laws have 300 years of jurisprudence, international treaties and Parliamentary laws.
- The recognition of IP rights is consistent with the pursuit of democracy, property rights and economic development.
- Weakening IP laws in the face of populist calls is bad policy.
- Consumers and the younger generations need no encouragement to infringe IP rights.
- Revisionist approaches to IP laws risk imposing the paradigms from pre-industrial society eg. authorship limited to craftsmen, working without modern technology.
- Now is the time to strengthen IP laws to drive technological development in the digital age and to provide certainty for investment in the future.