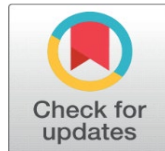
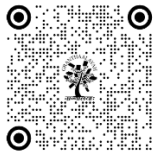


# COPYRIGHT PHILOSOPHY AND ITS JUSTIFICATIONS UNDER INTELLECTUAL PROPERTY LAW

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## ABSTRACT

Intellectual property rights have become increasingly diverse in terms of their use cases in modern society and advancements in technology have drastically changed the processes involved in filing and recognizing the protection of IPR. These changes have a positive effects including further technological advancements and explosion of creativity in society. But with the need for dynamic laws and possibility of absolute globalization it is important for IPR to be globally monitored and recognized to increase competition and promote innovation. It is said that copyright law will always be a delicate balance between rights of content owners and rights of users. Historically this balance has been stuck through absolute ownership that was given by various safety measures which take form of exceptions to said ownership or control over a work. But through the last few decades gross expansion of power for copyright owners are coupled with provisions that benefit users. So in order to update the system for digital era there has to shift in the balance of power between owners and users.

**Keywords:** Copyright, Technological Protection Measures, Originality, Creators, Users, Intellectual Property Rights

## 1. INTRODUCTION

A creator or owner of intellectual property is granted a number of legal rights, which are collectively referred to as intellectual property rights. A person's rights over his mental inventions are as follows. By paying the mental labor and preserving the creators' property rights, they want to safeguard the interests of creators. This allows the innovators and makers to profit from their inventions. The legal rights that control how intellectual property is used are known as intellectual property rights. The rights pertaining to intangible property that belong to an individual and are shielded from unauthorized use are known as intellectual property rights. Intellectual property rights are therefore those that pertain to the ownership of intellectual property. By enabling the creators to profit from their creations, these rights seek to safeguard intellectual property. According to the Universal Declaration of Human Rights, everyone has the right to have their material and moral interests coming from their own creative works—whether they be artistic, literary, or scientific—protected. Therefore, by giving creators the sole right to their creations, intellectual property rights serve to reward human intelligence. Ideas, inventions, and creative expressions that demonstrate the public's readiness to

recognize property are considered intellectual property rights. In order to profit commercially from their creative endeavors or reputation, inventors or property creators are granted some fundamental rights under intellectual property laws. Intellectual property can be protected in a number of ways, including patents, copyright trademarks, and geographical indications. Original human works, whether they be artistic, literary, technological, or scientific, are protected by intellectual property rights. These are the legal privileges granted to the inventor to safeguard the creation for a predetermined amount of time. For a specific amount of time, the creator or inventor is granted the legal right to make full use of his product or innovation. It is widely acknowledged that intellectual property is essential to the modern economy. Intellectual property is linked to intellectual labor in order to prioritize innovation and reap the benefits for the general good. Technology innovators now face extremely high stakes, and knowledge must be shielded from unauthorized usage. Since intellectual property rights give the creator or inventor of an IP the sole right to use his creation or innovation for a predetermined amount of time, they are a powerful weapon for protecting the time, money, and effort that they have put in it. Therefore, by fostering healthy competition and supporting industrial development and economic progress, IPR contributes to the nation's economic development.

## 2. TYPES OF INTELLECTUAL PROPERTY RIGHTS

There are many types of intellectual property rights protected by law each offering different protections depending on the type of work being protected. Here are some main types

**Copyright:** The exclusive right to copyright is given to authors, artists, musicians, and scientists. The expression of ideas through original works, whether written or visual, is protected by copyright. The fact that copyright protection is automatic from the moment the work is generated is one of its benefits. The original expression of ideas in dramatic, artistic, and literary works is protected by copyright. This only addresses the idea's particular mode of expression. It grants authors the sole authority to copy, distribute, perform, and exhibit their creations. By defending the financial and ethical rights of authors, copyright promotes expression. India's copyright laws are governed by the Copyright Act 1957. The rights of authors and creators of literary and artistic works are referred to as copyright. Another name for a copyright is an author's right or literary right. An author's work is protected by copyright, which also forbids unlawful publication and copying. When a work is created and expressed in a tangible form, copyright protection starts. A work that is an original creation is protected by copyright. Additionally, expression is protected. Simple concepts devoid of any intangible expression are not protected by law and do not constitute copyright subject matter.

**Patent:** New innovations that satisfy the requirements of originality, creativity, and industrial usefulness are eligible for patents. For a predetermined amount of time—typically 20 years—patents grant the patent holder the sole authority to create, utilize, and market the innovation. New inventions are protected by a patent. It provides innovative, practical inventions that encourage an inventive step with legal protection. It gives the patent holder the right to use, manufacture, or market the invention for a predetermined amount of time—typically 20 years. It provides inventors with the legal authority to prevent unauthorized use of their creations. The Indian Patents Act of 1970 provides patent protection. A patent is an exclusive right awarded for an innovation or invention, which could be a product, a process, or a method that presents a new approach to a problem or provides a technical solution. A person who has created a new or useful product, improved an existing product, or developed a new method of producing an article is given a monopoly. Inventions with commercial and industrial value are eligible for patents. For a restricted time, it is the sole right to produce the new product or produce the product using the developed method in return for disclosing the innovation. A patent can be sold by its owner to others to exploit the same

### Trademark

A identifiable symbol or phrase that legally distinguishes one product from another is called a trademark. A firm is the sole owner of a trademark. Since it owns the trademark, no one else is allowed to use or reproduce it. Unique names, logos, or phrases that are used to differentiate products and services are protected by trademarks. It keeps customers from being confused and guarantees brand recognition. By identifying a brand, trademarks let customers recognize the place of origin of products. A brand's uniqueness is guaranteed by trademark protection. In India, trademarks are governed under the Trademark Act 1999. A trademark is a symbol used to set one company's products apart from those of its rivals. A trademark can include a single letter, logo, design, or number, as well as three-dimensional elements like packaging or shape. According to the Trademark Act of 1999, a trademark is a mark that can be represented graphically and is used to differentiate one person's goods or services from another. The form of the product, the packaging, and a

combination of colors can all be considered trademarks. As a result, individuality is the hallmark. Service marks are trademarks that are used in relation to services like banking and tourism. The sole authority to utilize a registered trademark belongs to its owner. Eleven classes of services and thirty-four types of products make up the 45 trademark classifications. A trademark reflects the goodwill of business and it helps to establish a dedicated consumer base by preventing others from imitating your brand.

**Geographical indications** Products that come from a particular place and have special characteristics because of their location are protected by geographic indications. Geographical indications support local heritage and economic growth and are frequently linked to traditional items. In India, geographical indications are governed by the Geographical Indications Act 1999. To identify products with a particular geographic origin, a geographical indication is used. These indicators indicate the goods' quality, reputation, or other attributes that are primarily related to their place of origin. Foodstuffs, agricultural items, wine, industrial products, and handicrafts are typically classified by their regional indication. It gives both domestic and foreign parties legal protection, which increases exports. It stops others from using registered geographical indications without authorization. It supports the financial prosperity of manufacturers of goods made in a particular region. Regarding the creation of geographical indications, the legislation contains specific provisions.

### 3. THEORIES OF INTELLECTUAL PROPERTY RIGHTS

While many theories constitute the philosophical justifications of intellectual property. Some theories are provided below:

**Natural Rights Theory:** The notion, which is mostly based on John Locke's ideas, holds that everyone has the right to create anything that comes from their own creativity and originality. The notion states that both tangible and intangible creations are protected by intellectual property rights. Numerous experts have pointed out the shortcomings of this well-known idea. According to this theory, these rights have an indefinite period or duration. This is detrimental to the public interest since many creations' advantages cannot be fully realized without entering the public domain. Second, other artists are actually prevented from creating in the same or related fields by this unrestricted word. The basic rights that every individual possesses are discussed by the natural right theory. Everyone has a natural property right to their own thoughts, according to the principle. This hypothesis states that a creator cannot possess an abstract idea that could influence later inventors just by existing. Therefore, others will not be allowed to use similar ideas if one individual has the right to possess the concept of creating lemon juice. When it comes to the concept, a natural right doctrine encourages individual inventiveness while preventing others from following suit.

**Labour Theory:** The labor idea comes from John Locke's writings. This argument holds that if someone works on resources that are owned by the community, they should naturally own the products of their labor. Therefore, the ownership rights over intellectual property must be granted to the person who invests time, money, knowledge, and other resources in its creation. Without two clauses provided by John Locke, this theory would be lacking:

- No waste of property that is acquired through the infusion of labor.
- A sufficient amount of property must remain for the use and ownership of others.

According to Locke's thesis, work that is invested with an unowned thing becomes intertwined with it and cannot be detached without causing harm to the new creation. As a result, the creator now has the inherent right to possess the work that he has created. Property rights guarantee that no one else can use, transfer, or alter an individual's original product. The owner's or creator's intellectual property rights are legally protected.

### 4. PERSONALITY BASED THEORY

Scholars such as Georg Hegel and Immanuel Kant promoted this theory. When someone uses their labor to make anything, they also add aspects of their personalities to the finished product. The Personhood theory of intellectual property rights is the name given to this. According to this theory, people build their personalities via their labor and output. The right to cultivate one's individuality is a part of the right to property. Hegel argues that the right to intellectual property protects and allows for the growth of the individual's individuality, which extends beyond material possessions. Individual interests are more important than only financial objectives when it comes to the right to defend personality development, which extends to material things.

Both the right to make a living from the work and the right to safeguard the identity of the person represented in it should belong to the artist. Creativity and everything that goes along with it must be protected by intellectual property rights. The personhood theory clarifies that an individual's personality is fundamental to their property right by stating that the creator's creation is what shapes their personality. According to this notion, it will be deemed theft if an unauthorized user makes someone else's creation available to the public without that person's previous authorization.

**Utilitarian Theory:** The utilitarian theory, sometimes referred to as incentive theory, is another widely accepted theory. The central idea of the theory. The definition of utilitarian, which states that the greatest good for the largest number should always be supported, contains the central idea of the ideology. According to this view, when a creator produces anything, society gains from it, giving him a special privilege. Following in Jeremy Bentham's footsteps, the utilitarian philosophy focuses on maximizing benefits for the largest number of people. The theory is based on the idea that industrial growth and cultural goods, when combined, may have a positive and significant economic influence on society and people in general, even if the term utilitarian refers to social welfare. The concept of intellectual property rights implies that creativity and invention must be encouraged. By offering fundamental evidence that the product of such development will be better than the prices created for the relevant product, this demand can be satisfied. Because it upholds society's duty to honor the creator's claim to ownership of their creation, which benefits both the inventor and society at large, the utilitarian theory is sometimes referred to as incentive theory.

## 5. NOTICE AND TAKEDOWN PROCESS

Copyright holders can use the DMCA notification and take down procedure to have user-uploaded content that violates their copyright removed from websites and other online platforms. The procedure begins when a service provider receives a DMCA takedown notice from the copyright owner asking them to remove content that violates their copyright. Internet service providers, website operators, and other online site operators are examples of service providers. Copyright law specifies a number of components that can be included in a takedown notice. The service provider could decline to remove the content if the majority of the components are missing.

The service provider may nonetheless decline to remove the content even if a takedown notice satisfies all the conditions. However, they expose themselves to possible secondary culpability for aiding copyright infringement if they do so. Whether or not the copyright owner has registered their work with the US Copyright Office does not affect the usage of the DMCA takedown procedure. Copyright infringement is the only acceptable use for it. Numerous service providers provide user-friendly online tools for submitting claims via an online DMCA takedown form straight to the provider. The service provider typically notifies the user or the other person in charge of engaging in an infringing activity after receiving a takedown notice.

A counter notice stating why the infringement disagrees with the copyright owner can be sent to the service provider if the infringer, acting in good faith, does not believe that the action is infringing. The service provider is required to forward the counter notice to the original takedown notice sender after receiving it. The service provider has to wait 10–14 days after receiving a legitimate DMCA counter notice. The item will stay down if the copyright owner files a lawsuit against the suspected infringement within that time limit; however, if no lawsuit is filed, the service provider is required to grant access to the infringing activity.

The notify and take down procedure gives internet service providers immunity from secondary infringement charges as long as they follow the guidelines, while enabling right holders to request that infringing content be taken down when it is submitted to one of the websites. In an effort to improve legal efficiency, a number of copyright enforcement systems have attempted to transfer copyright decisions to the commercial sector, the first of which is the notice and takedown system. Copyright adjudication under the notice and takedown system has become an uneven system that favors right holders at the expense of users' rights, much like other aspects of copyright law where the private sector is permitted to self-regulate.

## 6. TECHNOLOGICAL PROTECTION MEASURE

The emergence of digital copyright made it easier to distribute, reproduce, and copy digital works. Enhancing the protection of their work in a digital context was the primary problem for copyright industries and content owners. Therefore, incorporating technological protective measures was the appropriate course of action. TPM is a collection of

several technological standards and controls that provide complete protection for digital work. Even beyond the parameters of the Copyright Act, it has broadened the scope of content owners' exclusive rights. Digital material copyright holders have the power to permit or prohibit users from accessing or duplicating their work. As a result, the content owner can create his own technological framework.

TPM's distribution system, which includes digital watermarks and encryption, guards against infringement of exclusive rights and digital works. The content is protected with relevant user licensing rights prior to encryption. Only authorized users are able to evaluate the work in accordance with the guidelines for permissible usage. TPM includes use control mechanisms, such as the right to copy, and access controls in addition to encryption. The first stage in implementing limits is access control, which involves preventing others from evaluating the work. However, when technology evolved during the revolution, people found themselves ahead of the curve.

They quickly figure out how to violate or get around TPM. A programmer's computer code can be circumvented or reverse engineered by another programme. It is feasible to obtain more access to work than the TPM mechanism was designed to allow once it is circumvented. To safeguard TPM, anti-circumvention restrictions were added by the Copyright Amendment Act of 2012. The passage of 65A and 65B makes it easier for India to join the WIPO internet treaties. In contrast to the US and EU, India has adopted a minimum approach to TPM. Section 65 A forbids evading the effective TPM that is used to safeguard any rights granted by the act. Only when there is deliberate intent to violate such a right does criminal culpability arise.

The generic exception clearly permits someone to get around TPM for purposes that aren't specifically forbidden by the act, making room for alternative acceptable uses. Certain exemptions include privacy, actions taken in the interest of national security, lawful investigation, testing the security of computer systems with the owner's or operator's consent, and encryption research, which refers to any activity done to find defects or vulnerabilities in the encryption technology used in the work.

## 7. PROPER LICENSING MECHANISM

Even with excessively lengthy copyright protection and enforcement procedures that prohibit legitimate secondary uses of works, the typical secondary creator frequently finds it impossible to actually secure a license to create a derivative. Because they can be hard to get in the first place and are sometimes accompanied by price tags when they are accessible, licenses are functionally unavailable to the typical secondary creator. Richer, more established individuals and organizations are now given preference over typical creators in the system that uses property rules to regulate derivatives licenses. Access is and will always be open to everyone, but in the spirit of a free market, it must be negotiated privately and one-on-one with the copyright holder.

Relevant economic and non-commercial elements, such as the work's perceived value and the present demand for licenses, will unavoidably shape these conversations. All save the wealthiest secondary creators are functionally denied access to the most socially meaningful works by the free market system. Second, non-economic factors that influence license pricing frequently include the author's irrational and sentimental attachments to their work, which may result in license rejection or exorbitant charges that exceed their true market value. Lastly, the upfront payment mechanism and the frequently exorbitant cost of acquiring a license deter secondary activity generally.

For the majority of secondary creators, the expense of obtaining a license to create a derivative is prohibitively high. According to economic theories, this expense is warranted. Copyright is worth whatever the seller may charge in a free market, just like any other item. Copyrights, however, are not subject to free market principles. Since every single work is distinct and subject to short-term, restricted monopoly rights, there is no competition. Extending these monopoly rights to derivatives goes beyond their intended purpose, which is to guarantee the commercial sustainability of creative works and encourage their development.

Furthermore, secondary and irrelevant elements frequently allow emotional attachments to their products to influence their prices or even their willingness to entertain a licensing offer when free market economics is used to rule a non-free market.

## 8. CONCLUSION

Rights to intellectual property are considered to be legitimate since they are non-competitive and, if non-excludable, present a free rider issue. Some contend, however, that these rights impede the advancement of innovation and scientific understanding. Because to copyright restrictions, a great deal of knowledge is restricted. Laws pertaining to intellectual property are established to strike a balance between the rights of consumers and creators. Although information is freely available, it can be quite challenging during scientific breaks because publications come with a number of charges. Open source is not free in the sense that it is given out without modification or distribution; rather, it is a collaborative endeavor to grow and capitalize on intellectual endeavors. The open source project's developers still have final say over how their creations are used. It is claimed that the barriers imposed by copyright laws give society enormous advantages, which are linked to the introduction of obligation to regulate specific facets of copyright protection. Therefore, the system should provide open access that permits licenses to be refused outright. Removing the initial obstacles to secondary creation for creativity and innovation is another thing. In the end, the rule would generate new creative production and new revenue streams for both owners and secondary creators while limiting the value drop for content creators in their derivative works. Thus, implementing such a system would realign copyright law and benefit society.

## CONFLICT OF INTERESTS

None.

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