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What Is Intellectual Property?

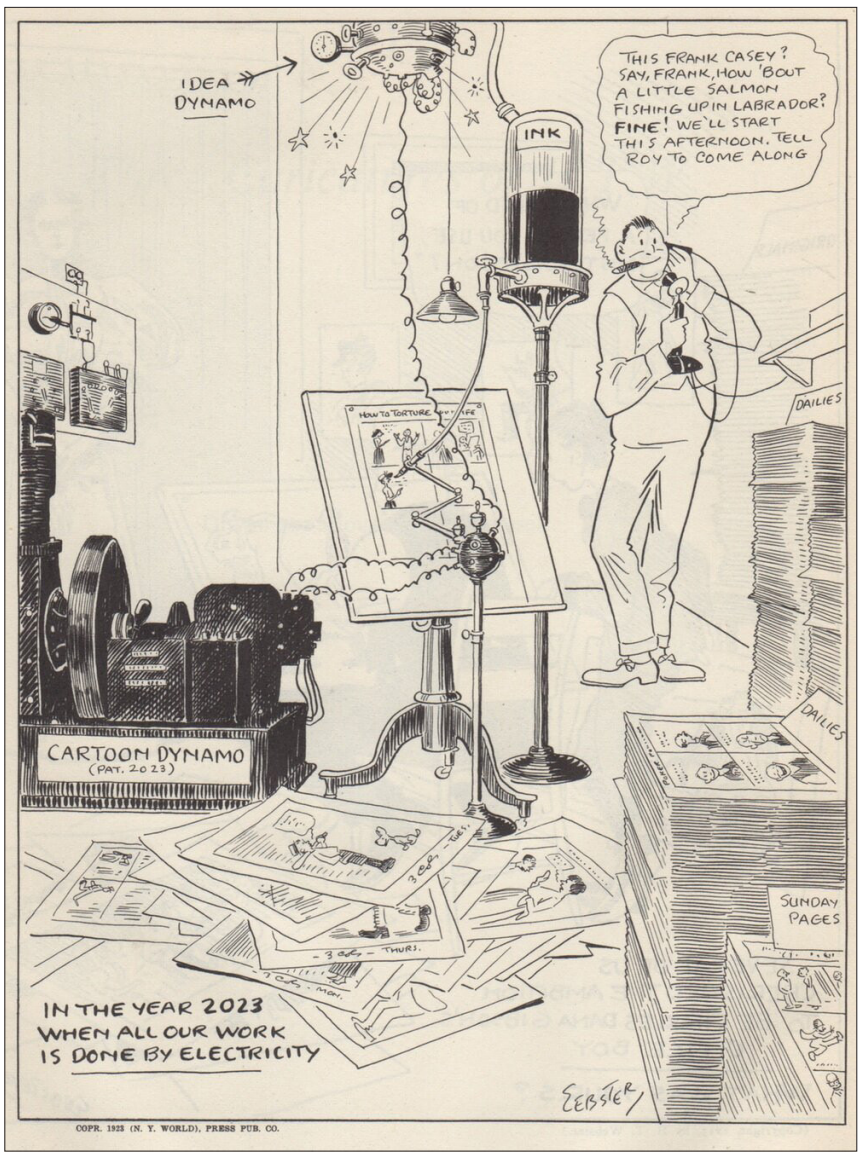

Image via Wikipedia.

Cartoonist HT Webster predicted AI-generated art in a cartoon published in 1923.

The Nature of Intellectual Property

On the most basic level, intellectual property (IP) is the concept that ideas have value and that those who originate ideas should have the right to benefit from those ideas. The concept is heavily integrated with capitalism, in which individuals control or "own" capital in order to build wealth and power. Intellectual property laws were thus developed towards this end, to make ideas a commodity and to provide a measure of control. To this end, several different kinds of IP protections were created. To understand intellectual property and IP law, it is helpful to understand the different basic kinds of intellectual property that exist in US law.

Types of Intellectual Property

Perhaps the most famous type of intellectual property is the "patent," which covers technical inventions and products. A patent is what an inventor, or company, obtains to protect something like a pharmaceutical drug, or a vehicular design, or innovations towards some industrial process. An Apple Computers chip or a specific design for a new Apple Computer are the kinds of things that can be patented. The purpose of a patent is to prevent other manufacturers from manufacturing the same design without consent, or more importantly, without *paying* for the right to do so. Patents, therefore, are meant to aid a manufacturer or company against competitors who might copy a design.

Patents do not last forever, but have built-in expiration dates. The purpose of this is to prevent a patent holder from stifling advancement and creativity by holding an exclusive license for an excessive amount of time. There are different types of patents, referring to different products, but most patents filed by the US Patent and Trademark Office (USPTO) have a term of twenty years. A utility patent, for instance, is issued for the invention of a new process, machine, manufacturing technique, or material and has a term of twenty years. In contrast, a design patent, which is for a new ornamental design, can only be patented for fifteen years. There is actually a special kind of patent for plants, which is issued when a person sexually or asexually reproduces a new plant cultivar, hybrid, etc. The owner of this discovery can prohibit others from reproducing the plant in question for twenty years.[1]

A trademark is a design, or a term, or phrase or combination that identifies a certain product, company, or individual providing services. Examples include the names of popular products, like Pepsi, Doritos, Toyota, Tesla, or Apple. A trademark prohibits other companies or manufacturers from using the marketing tools that companies and individuals use to promote and sell their products and services but the system is also meant to promote consumer confidence. If there were no trademarks, for instance, a consumer interested in purchasing a bag of Doritos might be

duped into purchasing a very different and unwanted product by a company selling another product and tricking consumers looking for Doritos into purchasing their products accidentally.

A copyright is another kind of IP protection associated with artistic and intellectual creative products. This is the kind of protection that covers novels, music, movies, and other works of visual and audio art, but also covers software programs and inventions in the field of computer coding that make certain kinds of computer processes work. A copyright would be involved, for instance, in prohibiting artists from performing another artist's songs or music without permission.

Copyright protections are what comes into play, for instance, when artists have opposed allowing Donald Trump to use their music to promote his political career. A substantial list of artists, including John Fogerty, Phil Collins, Bruce Springsteen, Leonard Cohen, Tom Petty, Prince, Neil Young, Eddy Grant, the Rolling Stones, the Beatles, Adele, Panic! At the Disco, Pharrell Williams, Rihanna, R.E.M, and Guns N' Roses are among the list of top-tier entertainers who have either asked Trump not to use their music or have taken legal action to sue the Trump campaign for using their music without permission. R.E.M. bassist Mike Mills tweeted, after the Trump campaign used two of the band's songs without permission, "Please know that we do not condone the use of our music by this fraud and con man."[2]

While patents and trademarks may refer to physical products, what IP protections protect is, as the name suggests, the intellectual knowledge behind these various products and services. Thus, even when a company trademarks a name and design, it is not necessarily the components, like the font, that are protected as much as it is the full combination of ideas, which in the case of a logo might include colors, abstract shapes, and certain uses of a font.

According to the World Intellectual Property Organization (WIPO), for a new invention to enjoy protections it must meet the following criteria:

1. The idea must have some degree of novelty, such as a new shape or design, a new functionality or characteristic that is different from what is called the "prior art," which means existing knowledge in that field.
2. The invention must involve some sort of identifiable innovation that cannot simply be something that the average person, with no specialized knowledge, could come up with. In other words, if the "invention" is so obvious that anyone might have thought of it, the innovation required is not sufficient to warrant protections.
3. The invention must be useful somehow. It must have some industrial or artistic usefulness that can be demonstrated by the party applying for the patent or other protection. This means that one cannot simply patent some discovery that has no relevance to anything in hopes that future relevance will be found and they will be able to capitalize on it later. If a person or company wants to protect an idea, they must therefore be able to demonstrate that the idea is relevant and, stated simply, potentially profitable.

4. The invention must also exist within a category that is able to be patented under the laws of the country in which they live. These categories differ by country, but there are many overlapping categories of unpatentable innovations. For instance, Europe, Canada, China, South Korea, India, and Russia do not allow a person to patent plants or animals, while the United States has an entire special system for patenting plants. Likewise, Europe does not allow a person or company to patent a medical theory, a scientific theory, or software programs that are not associated with novel hardware. Inventions that are seen as violating human rights or welfare can also be considered ineligible. Further, ideas themselves cannot be patented unless they are in the forms above, meaning that the idea can be represented by a concreted innovation or novel invention. One cannot simply patent the idea of a three-headed dog and then wait to see if someone wants to make one and demand payment as the originator of the idea.
5. Finally, the innovation must be developed to the point that the proposed innovation or invention could be replicated by a person with a standard level of expertise in a relevant field. This means that a person cannot simply patent, a method of treating male-patterned baldness using pond algae unless they've actually followed through on demonstrating how this invention can be created. In other words, they have to have figure out how to complete the innovation, not simply suggesting that the innovation is possible.[3]

Justifying Intellectual Property

Even for those not versed in the theory of IP law, it might seem intuitive and fair that individuals who invent something should stand to gain from their own inventions, but there are also many cases in which intellectual property does not serve public interest. Intellectual property laws drive up prices of many needed commodities and, in many cases, delay development and the evolution of consumer products as parties controlling IP interests seek to maximize their own benefit rather than engaging in further development.

For instance, imagine a situation in which a company creates a new kind of computer chip and then manufactures a laptop model using that chip. The patented chip might also be used for further development, to create more advancement or to develop a better model, but the company might not seek to do this until closer to when their original patent expires. This allows them to reap maximum benefit from their initial invention without incurring the costs of advancement. This period of waiting, leveraging existing assets rather than improving them, does not benefit consumers, however, because exclusivity limits competition. The company, freed from competing with those who might emulate or improve upon their patented designs, stifles innovation to maximize profit.

Supporters of strong IP protections, however, argue that the protection is essential to fostering innovation, because IP protections provide a guarantee of potential reward for those who take the risk of inventing something. The basic argument is