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This article from the [December 2012 edition](#) of the [IPA Review](#) is by IPA Adjunct Fellow, Jason Potts and Director of Climate Change Policy and the Intellectual Property and Free Trade Unit at the IPA, Tim Wilson.

A: Yes, it is— Jason Potts

Like most justifications of state intervention, intellectual property purports to solve a problem of market failure.

New ideas are costly to create and the supporters of IP would be happy to create a little temporary monopoly if it brings forth all manner of flourishing in the creative arts and practical sciences. If only that was actually the case.

Intellectual property is not, as often implied, a logical extension of the property franchise, for this monopoly control is not a right regularly granted to owners of other types of property, where such



restriction would be manifestly anti-competitive.

The standard defence of intellectual property seeks to emphasise rights to the fruits of one's own labour—the natural rights approach—or that it creates an incentive to innovate—correcting a market failure by internalising an externality. But this is not what intellectual property law is really about, which historically, has been the right to prevent others from competing with you; a protection that is highly valued in order to preserve an existing way of doing business.

Intellectual monopoly in copyright and patents is a relic from the mercantilist past and confers benefits on a concentrated few at the expense of the many.

More fundamentally: there is no evidence that intellectual property actually produces a net social benefit, in the sense that the social gains from increased production of new ideas is greater than the costs incurred in higher prices, constraints on reuse of ideas, economic distortions and dead weight losses, and the substantial overhead costs in operating the system.

Any form of protection of one small group at the expense of all others is unlikely to pass any social cost-benefit test.

There is overwhelming evidence that the market for ideas works just fine in the absence of intellectual property. Most of the major ideas in modern computing were developed before IP was extended to software in 1981. Vibrant creative industries such as fashion and food work entirely without patent and copyright protection. Historically, the development of the steam engine, electricity and aircraft only took off after the patents on these technologies expired.

In the absence of intellectual monopoly control over the use of copies, producers of ideas find other ways or business models to create value. There are other, better mechanisms to incentivise creative production and innovation that are less distortionary and controlling. Sometimes first mover advantages are sufficient, or sometimes business models can be adapted.

But besides all the bad rent-seeking economics and politics associated with intellectual monopoly, its most basic problem is that it simply gets the theory of ideas wrong.

IP law is premised on a production function for new ideas with inputs of labour and resources. But the main input into new ideas is the modification, development and remixing of old ideas. By inhibiting the reuse of existing ideas you impede the production of new ideas. Yet this is exactly what IP does: it's just another monopoly that benefits the few at the expense of the many.

A: No, it isn't- *Tim Wilson*

Property rights provide the foundations for innovation in a capitalist society, and intellectual property does not create a monopoly but rather protects property rights and encourages innovation.

The objective of IP is to drive innovation and creation, by providing legal certainty to owners so it can be traded in commerce and attract investment.



There are multiple strands of intellectual property, but the three main forms are patents which afford property rights to innovations, trademarks for recognisable marks, and copyright for artistic works.

These mechanisms do not constitute a monopoly, which is a key misrepresentation of IP. They are not monopolies; they are exclusive rights.

A patent on a cancer medication is not a monopoly on cancer medications. It is only an exclusive right to stop others freeloading on your innovation.

A trademark is only an exclusive right to own a mark within that industry.

And copyright is only the exclusive right over a literal creative work, not the idea.

A key benefit of IP is that it actually promotes awareness of technology and innovation, rather than concealing it.

A key component to innovation and its diffusion is commercialisation.

Commercialisation, especially outside of big companies, is financially difficult without the legal protection IP affords.

Unsurprisingly bank managers don't finance a property development on a site that a developer cannot prove they own. The same problem exists for innovators and creators with ideas and no property rights.

Similarly, with property rights owners can license their innovations and creations to seek mass markets.

Despite claims otherwise, natural intellectual property exists. It is called secrecy.

In fact it is a requirement of securing a patent that the innovation must be disclosed to the public to promote awareness and the potential for compounding innovation.

Without IP creators and innovators have little incentive to share their output with the world. If they do they risk prompt duplication and the lost potential of commercialisation.

As with all property, legality can create complexity.

Occasional examples of inhibited intellectual pursuits don't delegitimise the system.

The patent wars over sewing machines demonstrate the folly of judging IP narrowly.

Innovators sought to sue for infringement of their patents until they called a truce and developed a pool for licensing innovation so everyone was rewarded.



IP is also pro-poor.

Without property rights big companies can constantly invest to protect their IP through security features and complexity. Small creators cannot. IP gives them the legal recourse to defend their interests against the wealthy.

Support for IP shouldn't discount legitimate debate around reform. All capitalists should recognise property rights are sacrosanct, but there are limits.

The short commercial time frames needed to earn a return on incentivised innovation does bring into question whether a 20 year patent lifespan should be shortened.

A copyright term of the life of the creator plus 70 years is excessive.

But all property rights have boundaries. There is room for sensible reform without junking the known benefits of private property and harming society's intellectual potential.