2024–2025 National High School Policy Debate Topic: Intellectual Property Rights: Overview

Introduction

According to the International Trade Administration, intellectual property (IP) refers to “creations of the mind.” More specifically, according to Rutgers University, IP is “an intangible asset that has financial value and is protected through patent, copyright, trademark, and trade secret laws.” The protection of IP can extend to all sorts of ideas and inventions, from new technologies to works of art, music, inventions, and more. The protection of IP rights is enshrined in the United States Constitution in Article I, Section 8, Clause 8, which gives Congress the authority to protect individuals’ exclusive rights to their IP for a limited period of time.

Most people think of IP rights in terms of copyright and patent law. IP protections also extend to software; digital media; and medical, agricultural, and technological innovations, including patented genes, plant variety rights, pharmaceuticals, and medical devices. By the 2020s, IP rights were at the heart of the debate over how artificial intelligence (AI) is developed and used.

While IP rights are seen by many as a key driver of economic growth and a spur for innovation and creativity, critics have argued that they can also limit the public benefit of new technology, drive up the cost, and limit access to goods and services, including lifesaving treatments. In addition, the development of AI brought questions of IP to the fore, as AI uses copyrighted material to learn and then produce its own material. As regulators wrestled with the balance between protecting creators and public benefit, the stakes remained high—trillions of dollars of commerce are protected by IP rights—but also touched on foundational questions of what it means to be human.

Understanding the Discussion

Creative work: In legal parlance, a product of creative human effort, such as music, literature, software, drawing, and more.

Copyright: The exclusive legal right to reproduce, publish, sell, or distribute the matter and form of something (such as a literary, musical, or artistic work).

Intangible asset: A nonphysical item that has value, such as a trademark, patent, or brand.

Patent: Protection of intellectual property inventions for a limited period of time, typically twenty years, preventing others from using the invention without permission.

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Patent trolling: The acquiring of patents to threaten possible infringers with legal action rather than to use the patent to develop new products. Also known as nonpracticing entity (NPE) acquisition.

Trademark: A distinguishing, unique type of intellectual property that includes such things as logos, symbols, slogans, sounds, or combinations of these elements.

Trade secret: Confidential business knowledge that is not widely known and provides a competitive advantage for its holder.

History

The origins of IP rights in the United States are generally traced to the 1623 Statute of Monopolies, an English law that allowed the monarch to grant patents for inventions for as long as fourteen years, if the invention benefited society. The 1623 law included two key features of IP law: that individuals have rights to their ideas and inventions, and that these protections were time limited. Nearly two decades later, a similar principle was articulated in the 1641 Massachusetts Body of Liberties: “No monopolies shall be granted or allowed amongst us, but of such new Inventions that are profitable to the Countrie, and that for a short time.”

Colonial governments throughout North America sought to protect intellectual property, generally through a petition system. As the colonies moved toward independence from Great Britain, however, it became clear that a national policy was needed to protect copyrights and patents. Following the establishment of the United States, James Madison suggested that the Framers of the Constitution add a provision for ensuring literary authors had copyrights for their works for a limited time. IP rights were enshrined in the Constitution in Article I, Section 8, Clause 8, which grants Congress the right “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

Congress exercised its constitutional right to protect IP rights starting in 1790, when lawmakers passed the Patents Act and the Copyright Act, both of which were signed into law by President George Washington that year. The Copyright Act of 1790 was inspired by England’s 1710 Statute of Anne, which established authors as the main beneficiaries of copyright law and that their rights should be limited in duration. The Patents Act set forth that inventors had a right to their patents and set standards for which inventions were patentable. The new Patents Act of 1793 specified that patents only protected inventions that were “useful.” As the number of patent applications grew, the Patent Act of 1836 established the United States Patent Office and extended the term of patent protection to twenty-one years. Patents could also be renewed under certain circumstances.

Copyright law followed a similar pattern as patent law, with the Copyright Act of 1831 extending the term of protection to twenty-eight years with a fourteen-year renewal. The United States Copyright Office was created by Congress in 1870 to register copyrights for creative works and store them for the use of lawmakers at the Library of Congress. In 1881, the Trademark Act established the first federal protection for trademarks used “in commerce with foreign nations, or with the Indian tribes,” while in 1884, the Supreme Court added copyright protections to photographs. The Copyright Act of 1909 expanded the scope of works that could be copyrighted and provided a longer renewal period.

In the twentieth century, copyright laws were codified and expanded. With the Copyright Act of 1976, which superseded the 1909 Copyright Act, copyright law in the United States was overhauled and modified. Protection was given to works of art when they were created, and copyright was dependent on the lifetime of the

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creator plus a period of time, rather than a fixed number of years. This act also established the principle of fair use, the idea that copyrighted material can be used without permission under certain circumstances, allowing for criticism, reporting, and research, among other uses. The following year, the Sonny Bono Copyright Term Extension Act set copyright terms to life of the author plus seventy years and, for anonymous and pseudonymous works or works for hire, ninety-five years from first publication or 120 years from creation. In 1996, the Digital Millenium Copyright Act made it illegal to gain unauthorized access to or copy digital works under copyright, while also protecting online service providers from copyright infringement for storing such works.

Patent and trademark laws were also updated in the twentieth century and early twenty-first century. The Lanham Act of 1946 established a federal system for the registration and protection of trademarks in the United States. The Patent Act of 1952, later known as Title 35 of United States Code, introduced the principle of non-obviousness, meaning that patents were to be only issued for inventions that were sufficiently innovative. In 1975, Congress changed the name of the US Patent Office to the US Patent and Trademark Office (USPTO). The protection of trade secrets was addressed by the 1979 Uniform Trade Secrets Act (UTSA), an effort to streamline and codify state laws and regulations. Three key laws in the 1980s expanded patent protections for inventions involving publicly funded research and development: the Bayh-Dole Act (1980), the Stevenson-Wydler Technology Innovation Act (1980), and the Hatch-Waxman Act (1984). Trade secret protections were strengthened again in 1996 with the introduction of the Economic Espionage Act. In September 2011, President Barack Obama signed the America Invents Act into law, which established "the first inventor to file" standard, common in other nations, in the United States. Trade secrets protections were expanded again in 2016 with the Defend Trade Secrets Act (DTSA), which allows federal lawsuits for trade secret theft. This, like trademark protection, relies on international cooperation and is challenging to enforce.

Intellectual Property Rights Today

IP rights evolved over time as changing technologies and markets and debates over the nature of creativity, fair use, and the greatest public benefit continued. Controversy around artificial intelligence, medical and agricultural patents, and copyright and trademark protections have led to landmark legislation and widespread public debate. New systems designed to exploit IP regulations, like patent trolling and domain name squatting, where website names are bought up and then held for exorbitant prices, remained other ongoing regulatory concerns.

AI has intersected with IP rights in complex ways. In 2019, and again in 2022, the Copyright Office rejected an AI-generated work of art, determining that copyright protections applied only to original works by humans. Though this settled the issue at the time, as AI became more creative, questions continued to arise about who owns their creations, and, therefore, who can monetize them. In addition, AI companies have come under attack for using copyrighted material to "train" their systems. In 2023, the *New York Times* filed a lawsuit against Microsoft and OpenAI, two companies using AI, alleging copyright infringement. The lawsuit claimed that companies can use AI to build articles that are nearly identical to copyrighted material without payment for or permission to use the news organization's journalism. Digital media of all kinds has added complexity to copyright law in a broader sense, as the widespread availability of copyrighted material has made fair use more difficult to determine and enforce, especially in education and research.

Medical and agricultural patents have proven to be another thorny IP rights issue. While IP protections for newly developed drugs, crops, and medical devices spur

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innovation and provide capital for further discoveries, they also drive up the cost of critical medical care and can impact the food supply. The Supreme Court ruled in *Diamond v. Chakrabarty* (1980) that nonhuman living things can be covered by patents. Subsequently, in some areas, farmers are limited by a virtual monopoly in the seed and livestock available to them. Some companies engage in "evergreening," where minor modifications are made to extend the life of a patent and therefore retain control of it indefinitely. Rising drug costs and high-profile controversies have spurred a public backlash against some pharmaceutical companies, particularly after Martin Shkreli, the former CEO of Turing Pharmaceuticals, became a symbol of pharmaceutical greed in 2016 for raising the price of a drug used to treat parasitic infections from $13.50 per pill to $750. The COVID-19 pandemic declared in 2020 highlighted the importance of information exchange and access to innovative, affordable drugs, reinvigorating the conversation around the appropriate use of IP protections.

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