



Point: The US Federal Government Should Significantly Strengthen Its Protection of Domestic Intellectual Property Rights

Thesis

Robust intellectual property (IP) rights are enshrined in the Constitution, and are crucial to spur innovation, increase investment, and protect American Indian rights and the US economy.

Talking Points

- IP rights are foundational to the American way of life and are protected by the Constitution.
- The US economy is built on IP rights that can be monetized and commercialized.
- IP protections encourage innovation and creative work toward solving major problems, such as climate change and disease.
- IP protections could help to protect cultural expressions from exploitation.

Summary

Many have argued that when considering protections for IP, supporters of strong IP rights need no more proof than that afforded by the United States Constitution. After all, no other nation had included these rights in their founding documents before. The American way of life, founded on the protection of property rights “in legal institutions governed by the rule of law,” depended from the outset on the protection of private property. In case law and legislation, the United States has reaffirmed its commitment to treat IP as property, subject to the protection of the government. As Adam Mossoff put it in a 2021 position paper for the Heritage Foundation, “Both Founding Era sources and 19th-century court decisions, official statements, and commentaries confirm that intellectual property rights are property as a matter of basic legal doctrine and constitutional principle.”

Those in favor of the US government strengthening protection of IP rights have contended that IP rights are protected in large part because of the crucial role they play in the US economy. The US State Department has referred to IP as the “lifeblood of our economy” while offering some useful statistics to bolster their position. One such statistic cited has been that in 2019, IP-based industries accounted for \$7.8 trillion of gross domestic product in the United States and created 47.2 million jobs. “Without IP protection, revenues decline, leading entrepreneurs to reduce their investments in new innovation and content because there is a greater risk they won’t be able to recoup their capital costs,” Stephen

Ezell reported in an Information Technology and Innovation Foundation position paper in 2023.

Others, such as the United Nation's World Intellectual Property Office, have stressed that the protection of IP resources such as trade secrets and inventions are crucial to companies as they bring their innovative products to market. Without protection, competitors can suppress innovation, rush rival products to market, adopt the identity of products from others, and otherwise drive innovative new ideas out of the market. Without the monetary incentive that IP protection offers, it has been asserted, investors may be reluctant to support research into systems to reduce harmful emissions, lifesaving drugs, and drought-resistant genetically modified plants, for example, stifling progress toward solving pressing global issues.

Finally, some have argued that IP rights are crucial to protecting the rights of American Indians. Article 31 of the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states that "Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources." In 2023, the US Patent and Trademark Office, working to develop a position on this issue that more closely aligned with UNDRIP, began the process of public comment and Tribal consultation regarding protections for American Indian IP. According to the Native American Rights Fund, "Tribes have sovereign rights and authority as the holders and guardians of these aspects of our cultures that must be respected by the United States."

Ponder This

- The author has presented the fundamental positions for this perspective in the debate. Outline the strengths and weaknesses of each perspective.
- If asked to begin forming an argument for this position, what sources would you need to build your case? What fundamental information do you need? What opinion leaders in this debate would you look to in solidifying your argument?
- What are the weakest aspects of the position outlined by the author? How might those weaker arguments help you prepare a counterargument?
- What additional Talking Points could you add to support this position?

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