

When You Can Keep It and Give It Away: The Ethics of Intellectual Property

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13th Annual International Conference Promoting Business
Ethics

Outline

- 1 Intellectual property: the philosophy
 - Property
 - Intellectual property

- 2 Intellectual property: the business
 - Business ethics
 - Legal options
 - Agent options

Property

What is “property”?

Property

Roughly, thing x is the (private) property of agent A if and only if A has exclusive and extensive legal rights of access and / or use for x .

- Property is a matter of societal support
- Property rights can be enforced at net expense
- Property stands in need of justification

A typical justification

- What if we didn't have property?
- “The tragedy of the commons”
- Resources are “crowdable”
- Thus maybe it's better for all if there is property
- Collective property allocates poorly, so make it *private*

A wrinkle

Intellectual property is different.

- Intellectual property is not “crowdable”
- (Perhaps definitional of IP)
- Jefferson’s candle
- Can give it away *and* keep it
- So (it might seem) why not give it away?

An ethical principle

Here is a *plausible ethical principle*:

PEP

If you can make others better-off at (near) zero cost or effort to yourself, you should do so.

- A book you'll never read and couldn't sell
- Food you can't eat and will spoil
- There is *some* cost to you (effort of giving away), but minimal
- Even less cost for IP!
- Of course, there is cost to *develop* the IP ...

Business ethics?

- I must confess I'm confused about the nature of "business ethics", because
 - ethics seems essentially to involve *altruism*, but
 - corporations are *legally bound* to be selfish.
- So what to say about our plausible ethical principle?

A compromise?

I do think there can be a kind of compromise:

- Structure laws so that corporations can help shareholders only by helping people
- Act within current laws in a way that profits shareholders by helping others

We'll look briefly at each for the topic of IP.

Copyright

The following cribbed from Lawrence Lessig's *The Future of Ideas*:

- Require registration for copyright of *published* works
- Require renewal (with fee) every 5 years with 75 years max
- Software: 5 years, renewable once, source code in escrow
- Compulsory licensing (patents too)
- Tax benefits to donate IP into commons
- Punish abusers; allow private or public countersuits

Options to release IP

Our PEP suggests you should release IP when it's of little or no cost to you. But how?

- Explicitly release to public domain
- Explicitly license via “creative commons”
- Contribute to commons projects
- Use and contribute to open source software
- Use open standards