



PUBLIC INNOVATION

INTELLECTUAL PROPERTY IN A DIGITAL AGE

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Executive summary

Intellectual property rights (IPRs) have always spawned controversy for economic, moral and cultural reasons. Economists recognise that many private businesses and individuals require a degree of legal protection for their innovations, or else will lack the incentive to produce them, but fear that protections can also hamper competition and create monopoly. Consumers, educational institutions and archivists argue that IPRs risk impeding their legitimate rights to enjoy and share cultural artefacts, and some complain that the public sphere is becoming impoverished by the legal and technical regulation of information in the interests of business. However, the UK's role in the world economy as a producer of intangible goods may mean that there is little choice but to pursue such a model.

Digital technology is fuelling such arguments. The emergence of the internet means that valuable information and content can swiftly be shared with a vast audience of users. To tackle this, Digital Rights Management (DRM) is used by companies to micro-regulate how information and content can be used, and has received blanket legislative protection in most developed countries. The once symbiotic relationship between IPRs and public domain has become increasingly oppositional as a result of these technological changes.

This report presents an overview of the arguments and evidence that underpin IPRs, and the development of IPR policy in the UK and internationally. In doing so, it defines the terms used, explores the separate concepts of public domain and the public sphere, and shows how digitisation is transforming some of these categories. The report argues that government must seek ways of developing an IPR regime that balances all the various competing interests. A voice must be given to producers, but it equally should be given to other groups that feel the impact of the ways in which information is regulated.

There are four dimensions of the public sphere outlined in this report that correspond to four priorities that a public-interest IP regime must seek to balance: the economic incentive to innovate; the economic value of public domain; the civic value of access and inclusion; and preservation and heritage. However, there is undeniably a potential tension between public domain and the economic incentive of IPRs. Throughout this report, it is argued that the 'best' model of IPRs is not based on economics alone, nor can it be identified using a simple model of evidence-based policy. There are moral, cultural, political and economic complexities, as we demonstrate through the case studies presented in chapter three.

The lack of a consolidated attempt in policy circles to give value to openness, while simultaneously promoting the strength of IP protection, has increased this tension. There are often vagaries and conflicts in the current regime that mean there are conflicting interpretations of IP. Fair dealing in copyright is unclear, for example, and often left open to interpretation by rights-holders and users alike. Attempts by private firms to define fair dealing has increased risks that certain actions that have previously been thought of by citizens as 'fair' are now restricted. In particular, there are demonstrable problems with contracts and licences and, in enforcing these, DRM tools. This has serious implications for society in general, but in particular, negatively impacts people with accessibility issues, academic researchers, archivists, and consumers where problems arise with interoperability.

When the economic, the political, the cultural and the moral are closely connected in a policy problem, policy frameworks need to be built to recognise this. An inter-disciplinary analysis along with a hybrid notion of what government's goal should be is therefore essential. Economic analysis alone is not enough: indeed, where purely economic analyses are attempted, their conclusions have tended to radically diverge. Instead, a more suitable approach assesses rival IP systems as integrated models of information policy. Each model offers a different way of balancing competing priorities, and each has its own over-arching consistency.

Our conclusions and recommendations set out what we believe to be the most progressive model of information policy, which recognises the interests of the public first and foremost, and identifies what role IPRs play in achieving that. This need not involve weakening existing rights, but means resisting calls to strengthen them and investing more actively in public domain information and content.

The report's key recommendations include:

- Developing a model of IP policy that places knowledge as a public resource first and private asset second and promotes recognition of the overall coherence of this model. We argue that this should not be perceived as 'anti-business'; instead it will deliver both cultural and economic benefits and will underline the economic importance of IP protection as benefiting the rights holder in order to ultimately benefit the public.
- Creating as strong a political voice for public domain as currently exists for other interests. This is not to diminish the claims of these other interests, but to ensure the full picture – in both the short and long term – is taken into account to enable effective policy development. We assert that high quality public domain is both a cultural and an economic good and that the Government should make steps to develop and

defend it, through initiating the establishment of a UK Centre for Public Domain.

- Providing better legal protection to ensure that consumers, librarians, archivists and commercial researchers can pursue non-commercial objectives without fear of recrimination.
- Assisting small and medium-sized enterprises (SMEs) and individual creators to better utilise the IP system, by creating cheaper routes to enforcing IP rights and reforming the process of registering patents on a European level.
- Renewing the Patent Office with a wider mission that encompasses the public interest and takes a lead in promoting and undertaking research to assess the effectiveness of public policy in this area.