

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 6 | Issue 3
2023

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Theories of Grant for Intellectual Property Rights

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ABSTRACT

Recent empirical studies and polls appear to have considerably reduced long-standing worries about the degree to which the patent system might be used to impede or slow access to research and innovation. IPRs' contributions to promoting research and innovation are, however, only indirectly supported by a relative dearth of data and direct proof. Intellectual property protection is presently in flux and living things used to be largely excluded from protection, but views are changing, and more and more getting some sort of protection.

A wide range of intangible assets, including intellectual property, are entitled to protection with the idea that some works of human intelligence should enjoy the same legal safeguards as tangible or physical property. The word "intellectual property rights" refers to the general term for the assignment of property rights through patents, copyrights, trademarks, etc. Intellectual property rights are justified by the utilitarian theory on the grounds that it optimises societal benefits. Offering patent and copyright protection is viewed as a motivator that encourages disclosure by writers, artists, and inventors. Without such safeguards, creators and inventors would have to live in constant dread that society's members would steal their ideas and copy them without their permission.

According to Locke's labour theory, which is an extension of the natural rights theory, property rights in intangible objects can be justified on the grounds that a person put forth labour to create the nebulous object. According to Hegel's personality theory, intangible concepts and expressions should be protected as property because they are an extension of the personality of the inventor or creator.

Intellectual property is essential to the advancement of humanity from all the previously mentioned points. We can use intellectual property for a broad variety of purposes and it greatly benefits us in many different industries. In addition to fostering growth, intellectual property aids in the future developments in bioengineering will undoubtedly bring about a great deal more benefits for us, making it easier for us to live and survive.

Keywords: IPR, Utilitarian Theory, Personhood Theory, Labour Theory, Social Planning Theory, The Ethic & Reward Theory.

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I. INTRODUCTION

The fundamental tenet of intellectual property rights is to safeguard cerebral creations in the same way that physical properties are protected. Theoretical understanding of intellectual property rights is essential for comprehending the rights granted and the justification for them. It's interesting to observe that despite being a subset of intellectual property rights, trade secret law is very different from other intellectual properties. This area of intellectual property only addresses wrongfulness that is determined by reference to independent legal norms and focuses primarily on particular obligations.

Thus, trade secret law makes use of intellectual property ideas. This article will provide a thorough analysis of the various trade secret protection theories that have been developed by different philosophers with a purpose and a goal in mind.

Compared to other traditional types of property, intellectual property has distinctive qualities. It is neither exclusive nor competitive. Therefore, the body of legislation currently in place to regulate such traditional property is inapplicable to regulating the acquisition, transfer, and use of intellectual property.

With the idea that some products of human intelligence should be given the same protective rights that apply to physical property or tangible assets, intellectual property is a wide category of intangible assets that is entitled to protection. Intellectual property rights are the umbrella word for the temporary transfer of property rights obtained through patents, copyrights, trademarks, etc.

"Intellectual Property (IP) refers to creations of the mind, such as inventions; literary and creative works; designs; and symbols, names, and images used in trade," the World Intellectual Property Organization states. Copyright, patent, trademark, and trade secrets are some mechanisms under intellectual property rights (IPR) that protect new invention from being imitated without permission. Because intellectual property is intangible, it needs to be protected by law in the same sense as corporeal property.

IPR is not a new idea; rather, it underwent significant development after the European industrial revolution, when industrial development was at its height. However, the 19th century saw the beginning of the codification of rules governing intellectual property. Since then, "IPR have been instilling creators' trust that their IP is secured, thereby encouraging further innovations."

IPR has fostered creativity and invention while protecting original concepts and technical creations from unauthorised copying and manipulation. Many businesses all over the world

have turned to IP rights to protect such intangible property. A few of the industries that have quickly adopted IPR include sports, information technology, the fashion and entertainment industries, biotechnology, and the pharmaceutical industry with the goal of legally "safeguarding ownership, thereby providing distinct identity" and inspiring inventors to come up with and develop more ideas.

By giving creators a feeling of trust and ownership and ensuring that their works are safe even when made available online, intellectual property rights serve as a motivator. Due to the present state of innovation and technological development, it is now necessary to legally protect these inventions and works of art; as a result, the enforcement of intellectual property rights supports them. Therefore, there are different schools of thought that support intellectual property rights. As follows:

- i. Utilitarian or Incentive Theory
- ii. Personality or Personhood Theory or Hegel's Personality theory
- iii. Labour Theory or Natural Right theory (Locke's Theory)
- iv. Social Planning Theory
- v. The Ethic & Reward Theory

1. Utilitarian or Incentive Theory

The term "utilitarian" refers to "social welfare," and the great economists Bentham and Mill promoted this theory with the aim of making every decision universal in the sense of achieving the greatest benefit for the greatest number of people.

This theory's main tenet is that cultural and industrial advancements can have a positive and significant economic effect on society. Therefore, there should be some minimal certification that the results will be better than the costs incurred for his job to fill the need of promoting inventions and creations.

"Greatest good for the greatest number" essentially means that the greatest number of people should be happy. Therefore, behaviour that makes a lot of people happy should be praised and encouraged, whereas behaviour that makes the community unhappy should be avoided or discouraged. The utilitarianism idea, advanced by Jeremy Bentham and John S. Mill, promotes sociocultural and commercial advancement. Similar to how it is implied in intellectual property, utilitarian notion is important.

The advancement and progress of a civilization benefit the people living in that community as and when a person develops a product or there is technological innovation. Since this

development contributes to and makes society happier as a whole, it is important to support and foster this kind of innovation and creation. Giving the creator exclusive rights will support him because he has worked hard to uplift society and bring joy to as many people as possible. This will not only inspire him to work harder, but it will also give him the confidence that he and his contributions are regarded and valued as they ought to be. Therefore, it is anticipated that the government or administration will grant these rights and acknowledge their accomplishments.

This theory aims to maximise social welfare and is only supported by economic principles. It states that intellectual property must be protected if doing so results in economic benefits for the vast majority of a community. For example, the initial United States copyrights and patent legislation featured this sentence in its preamble- 'to Promote the Progress of Science and useful Arts'.

In order to encourage the creator or inventor to create more intellectual property for consumption by the general public, IP is protected. This is also one of the major explanations for why intellectual property rights are more limited than rights granted to other traditional forms of property. The majority of intellectual property rights are temporary and restricted (subject to conditions). This is done in order to strike a balance between the public's advantage and IP owners' exclusive rights.

Utilitarian theory is often used to support IPR. John Stuart Mill created a concept of utility that says actions are acceptable if they result in the greatest happiness for the vast majority of the people and guarantee the absence of pain. An action should not be undertaken if the sum of all the happiness it produces is less than the sum of all the suffering it causes.

As a result, utilitarianism according to Mill is understood to promote the welfare or well-being of all individuals. Therefore, if an action aims to optimise everyone's wellbeing and reduce their suffering, it is desirable or acceptable.

IPR primarily relies on the incentive system and the idea that offering protection to innovations or other new creations will motivate people to share their innovations in an open manner without worrying that others will steal their original ideas. Giving property rights to creators and innovators of creative works is merely a means to a goal, according to utilitarian theory.

As the new invention or idea is more openly disclosed, society ultimately gains. In contrast to previous practises of rewards or privileges given by the monarchy and the government, Mill concurred that patent monopolies are appropriate. He claimed that the government's decision to bestow rewards or privileges required discretion on the part of the authority, which might not always recognise certain inventions.

It was considered to be a good system to have a patent system that gave the inventor a monopoly in return for disclosing the invention. It achieved a delicate equilibrium between safeguarding the inventor's interests and disseminating knowledge about cutting-edge technologies.

The contemporary trademark law's justification for existing is also based on utilitarian theory.

The use of marks on the products serves to identify their origins. It conveys to the customer information about the products' country of origin and, to some degree, their quality. If trademarks aren't secured, anyone can use them to pass off their products as those of others. This would hurt businesses and confuse customers who identify the mark with a particular quality and coming from a specific company.

Consumers will spend more time searching for goods they previously purchased and associate with quality if trademarks are not protected, which will raise the cost of their inquiry. Thus, a utilitarian would contend that securing marks would lower the cost of searches, prevent confusion, and guarantee quality by eliminating fake products from the market. This optimises social well-being while minimising harm to all members of society.

The presence of the copyright regime can be justified on utilitarian grounds since it safeguards the creations of writers, composers, sculptors, painters, and photographers. Authors would not be sufficiently motivated to participate in creative work if they lacked protection. A copyright system gives the author enough incentives because it allows him to share his work without worrying that someone will steal it. Additionally, it allows the author to make money from his original works. A utilitarian would contend that a brief monopoly would encourage more authors to disseminate their work, allowing the general public to read, enjoy, and respect literary creations.

On the other hand, the utilitarian defence of IPR is criticised for failing to strike a compromise between private and public interests. Private intellectual property limits how concepts can be used.

Like its name implies, the incentive theory supports the idea that society has a responsibility to honour innovators and their ownership rights because doing so benefits everyone.

Criticism of the theory

The primary issue with this theory is that utility gains from a singular innovation's impetus are balanced out by losses brought on by exclusive ownership. Therefore, the issue of whether or not the advantages of IPR can be balanced against the casualties arises.

2. Personality or Personhood Theory or Hegel's Personality theory

Immanuel Kant and Hegel are largely credited with creating the personality theory. The theory argues that intellectual property is the physical manifestation of one's personhood and hence the creator must be enabled to safeguard the same. Unlike other economically motivated defences of intellectual property, the personhood theory offers moral grounds for its preservation. All intellectual property is regarded as an extension of the creator's will, and as a result, it is connected to the personality and person of the creator.

According to Hegel's philosophy, the intellectual property system should be set up so that more expressive works receive greater security than inventions like genetic research. This is due to the fact that expressive works demand a greater level of personalization, making them a larger part of the creator's character.

The theory that asserts intellectual rights enable and safeguard the development of the personality, extending to material things, is more profoundly held by the greatest philosophers of all time, Kant and Hegel.

According to this theory, everyone's personality develops in the context of their job, innovation, ideas, and creation. Our property rights are deeply rooted in the augmentation of identity.

This theory compares personality and property law in the context of copyright (because the same way tangible assets are protected, the creative artistic works are also viewed as asset and get protected). Personality or spiritual theory may not seem to be the best course of action after considering the divergent labour theories of Locke and Hegel. Locke's theory views property as serving personality, whereas Hegel's theory sees property as the apotheosis of personality.

Famous philosophers like Georg Hegel and Immanuel Kant advanced this legal theory. According to the personhood theory of intellectual property rights, when someone uses labour to create something, they also embed some of their personality into the product. A person's personality development is inherent, so it naturally forms a crucial component of all creative works. The creator also acquires ownership rights to the personality that emerges as a result of the exclusive property rights granted over creative works and original productions. This obligation to "protect the growth of personality" also applies to tangible objects.

Instead of just protecting financial interests, these rights place more of an emphasis on preserving and protecting interests linked to personality. Other than the right to fiscal advantage, the maker should also be granted the right to safeguard his identity infused with the creation. Both ingenuity and all other components should be protected under intellectual property laws.

The idea of personalities has been used to support IPR. This theory holds that since a work or a creation is a manifestation of its author's or inventor's personality, it belongs to the author or inventor. In his work "Elements of Philosophy of Right," George Wilhelm Friedrich Hegel argues that the individual's will should be given greater weight than other components of an individual. He describes the personality as the will's battle with itself to become real. Hegel claimed that a person's identity is a reflection of their will.

Authors, musicians, artists, sculptors, photographers, and other creatives can use Hegel's theory of personalities to support their assertions in their work. The personality of an author comes through in his or her writing. Authors express their interior personalities (i.e., feelings, emotions, experiences, and imaginations) through the books they write. For instance, J.K. Rowling's demeanour is expressed externally in her Harry Potter series. The right to property is justified by the fact that the book itself is an expression of the will and a component of identity. Similar to creative technology, which deserves a property right because it is a manifestation of the inventor's will.

The problem in applying personality justification to intellectual property would be in identifying whether there is a personality stake in the specific object which is the external manifestation of the will. Further, Hegel's proposition that works are external manifestation of a personality also presents issue within the realm of IPR.

No matter how much they are plagiarising, a person who writes (either by handwriting or typing) a book by repeatedly copying the works of others or a painter who copies the work of another painter has done so by clearly expressing their own personalities. The writer or painter, in copying or imitating, has used his skills and abilities and voiced his will and as such would have a property right in it. This would be detrimental to an IPR system because it does not acknowledge the imitator as the owner of property rights.

Criticism of the theory

When a piece of work is finished, it no longer needs its creator and is instead reliant on the public realm. In actuality, the reason a product or piece of work gains significance is because other people attach significance to it.

If we take into account the fact that once the original work is created, it is separate from the creator, as per this theory. As the work becomes available to the public, it is up to them as how they receive and treat it. Consequently, it is independent of the individual who created it.

3. Labour Theory or Natural Right theory Locke's Theory)

This theory is largely founded on John Locke's idea that an owner has a natural right to the things he creates using his own labour and efforts, whether those are physical or mental. As a result, ownership results from the work and creativity of the individual who created it. Individuals have a right to manage the results of their own work, according to Locke.

According to him, a person who cultivates crops using their own labour or develops a new innovation using their own labour "naturally acquires property rights" just by virtue of the addition of their own labour. Similar to this, the natural rights theory of intellectual property asserts that a person naturally comes to own any works of art or literary compositions that they produce because they contributed their own cerebral labour to them.

Locke's theory was founded on the idea that when someone invests their labour in an unowned object, it becomes merged with the new object that is produced and cannot be separated without harming the newly created novel object. Then, the thing over which the creator exercised his creative intent becomes subject to his natural rights. A person's initial creation is shielded from use, transfer, or manipulation by another person once they have acquired the property right. Any such violation of the owner's or creator's intellectual property rights would be illegal.

The labour theory is presented to us in John Locke's works. It contends that if someone invests their labour into jointly owned resources, they should be entitled to natural possession of the outcomes of their labour. As a result, someone who invests time, money, knowledge, and other resources in creating intellectual property must be rewarded with the right to own it as the fruit of their labour.

This theory's primary rationale is that everyone has a right to regard their ideas as natural property rights because they were created as a result of the creator's effort, originality, and inventiveness. This theory's fundamental tenet is based on John Locke, a renowned philosopher, who held that an author has a natural right to his work if he applies his intellectual labour to it. The rights of the owners of these two types of properties, such as the right to enjoy the property, the right to prevent others from using the property, and the right to transfer the ownership, are the same for both intellectual property and conventional tangible property in this respect.

The basis for Locke's interpretation of this labour defence is the idea that every person has historically owned their bodies as property. A person's labour is his own property, according to Locke, because he owns his body. As a result, it is difficult to distinguish between labour and its output. Here, only an individual's work matters as a requirement for acquiring property, no less to others.

If someone works hard to create an inventive machine or product that is useful, Locke would be happy to award them a patent. James Watt, for instance, used his labour to create and enhance steam engines that could be applied to trains.

Watt's creation increased worth and fueled economic expansion. Watt's steam engine can be protected by a patent because he combined his labour with others to create a new technology, which is supported by Locke's labour theory. According to Locke, a copyright should be readily given to an author, painter, photographer, or musician who has worked hard to express his original ideas in the form of a book, painting, photograph, or music album.

Locke's theory is susceptible to some restrictions and objections. According to Robert Nozick, the benefits of labour are typically valuable, and the worker can take this value thanks to property rights. Locke only permitted the right to own private property if there was enough left over from the shared pool of resources for other people, according to Nozick. He clarified that Locke only permitted private property rights if there is enough left over for other people and it does not hurt others.

If there are few natural resources available and a large number of people rely on them, then a person who has mixed his labour cannot claim property rights in it because doing so would deprive others of it. Therefore, awarding a patent to a person or an organisation that restricts access to others would undoubtedly worry Locke. Patents on specific cancerous genes, such as the BRCA1 and BRCA2, would prevent others from using the genes to create a diagnosis tool. If there isn't enough money left over for other licences, Locke would undoubtedly be against them.

As an illustration, W.R. Grace sought to trademark neem extract. All Grace did was pinpoint the precise chemical substance (azadirachtin) in the neem plant that had insecticide qualities, then she extracted it and filed a patent application for it.

It can be said that it already existed in nature and that its properties would have remained the same whether or not Grace had identified the chemical component that had the insecticide properties, despite the labour involved on his side.

Since this right can be ascribed to the society that is developing the system of safeguarding labour, the issue of who has the right to own intellectual property rights at the expense of others and the right to receive royalties and fees based on property rights is not one of natural rights (product invented). IPR are thus somewhat reliant on the broader interests of society.

Criticism of the theory

The concept of IPR's temporal restriction is not covered by this theory. The duration of IPR usage implies that after a specific amount of time has passed, the IPR-protected items will become public property. The Lockean view, however, advocates for perpetual ownership of tangible assets.

This theory states that it is impossible for one person to appropriate all of the world's natural resources. For instance, if someone appropriates the concept of the thinker to make milk from soybeans, that person will corner the entire soymilk market. Therefore, according to Lockean theory, inventors are prevented from capturing the global market with their abstract concepts.

The Lockean Proviso prevents an inventor from possessing an abstract concept that might influence future innovators.

4. Social Planning Theory

According to this theory, intellectual property rights are specifically regarded as a component of general property laws that must be cultivated in order to achieve a just and appealing society.

Comparable to utility theory is this one. It states that in order to produce a vibrant and rich cultural environment, property must be protected. Given that both theories put society at their core, they are comparable to the utilitarian theory. Both of them are different because social planning theory only focuses on the promotion of culture and doesn't address economic welfare in general. Famous thinkers like Neil Netanel, Keith Aoki, Rosemary Coombe, Niva Elkin-Koren, and Michael Madow are just a few who support this theory as a defence of intellectual property rights.

This method almost follows the utilitarian theory in its orientation, but it differs in its willingness to let go of perception of a desirable society that is richer than the utilitarians' conception of societal welfare.

5. The Ethic & Reward Theory

This theory provides a moral and social justification for the exclusive rights to intellectual property. The idea of ethics calls for a fair and proportionate input from the side of the creator or innovator who has created something for the benefit of society. The IPR are seen as "an expression of gratitude to an author for going above and beyond what society expects or feels they are obligated to do" in this context.

When the work is made openly available, others are prohibited from using the methodology or the reward in specific ways. According to this interpretation, reward theory justifies the use of

patents, copyrighted creations, and designs, but trade secrets are not secured because public disclosure of information is prohibited.

By giving him sole ownership of the product, an owner or creator is given legal protection under IPR for his novel creations. These exclusive rights give him the freedom to use the property however he pleases, to prevent others from using it, and to dispose of it however he pleases. By producing his work, the creator is rewarded for adding to society's well-being; however, when a moral or ethical perspective is present while rewarding, it falls under this theory of intellectual property rights.

This theory is based on the idea that giving exclusive rights to an author for their original work is "an expression of gratitude to an author for doing more than the society expects or feels that they are obliged to do." It implies that in addition to receiving any profit or payment for his work, if any, the individual should also be given exclusive legal rights to the goods they produced because they helped improve the community.

According to the Ethics and Reward Theory, the creator of the original work may have received compensation in the form of royalties or another form of payment, and since he provided something for "social utility" that would benefit society as a whole, the creator should receive additional compensation in the form of exclusive legal rights to his novel production. Theorists who subscribe to this view contend that giving someone exclusive rights will adequately reward them for contributing to society's welfare while also respecting their contribution. Since the creator would be legally protected under IPR, these exclusive rights serve as moral and ethical rewards.

Although this theory contends that the innovator can initially benefit from such a right, it also raises the issue of whether innovators themselves merit the same right.

Due to the fact that the ancient indigenous communities did not receive compensation for their exceptional contributions to traditional methods and art, this theory is limited in its ability to safeguard traditional knowledge. The entire reward would go to the person who filed a patent based on traditional knowledge rather than the knowledge's original owners.

II. CONCLUSION

It is a well-known truth that intellectual property rights have been very successful in preserving the original works that have aided in the development and advancement of any country. The community now produces more as a result of their support and encouragement. It is clear that competition has found its way in this era of technical advancement and rising artistic production.

In order to manipulate, copy, or use illegitimately others' works to create something new, people may engage in unfair practises.

Intellectual property rights such as patents, trademarks, copyrights, and trade secrets have a permanent position in law to reduce such occurrences. It makes sure that there isn't any unfair behaviour or unhealthy rivalry. Intellectual property rights serve as incentives for those who engage in scientific investigation and testing. They feel appreciated when they receive such compliments. In addition to giving them ownership rights, these rights also reward and honour them for their hard work. Additionally, it safeguards the financial interests of authors.

In addition, the current IPR rules may need to adapt to a number of challenges brought on by changing times and ongoing advancement. The upcoming years will be crucial for assessing how domestic IPR laws have improved and changed in contrast to those around the world. The development of IPR laws over the future years will be interesting to watch.

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