Should Intellectual Property Rights be Abolished?

By Nonoy Oplas
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Below are my recent papers plus debates with some libertarians who are passionately advocating for the abolition of various intellectual property rights (IPR) like patents and copyrights. It is composed of a 7-parts discussion posted in my blog, http:funwithgovernment.blogspot.com this year.

Here we go.

Part 1, April 19, 2011

One thing that I find strange among some free marketers, especially among certain camps in the libertarian movement, is the rabid campaign to disrespect and abolish intellectual property rights (IPR).

One of the most important basis of individual freedom and personal liberty is the protection of private property rights. Your cellphone is yours and yours alone. It cannot be a cellphone of your neighbor or your friend or your city mayor or President of your country. If other people can say that "Your cellphone is also my cellphone; now, give it to me and I will use it the way I want to use it", then there will be no peace in society. Bullying and stealing is the rule of the game. And society can stagnate if not revert back to barbarism.

A group of libertarians argue that intellectual property (IP) is different from physical property. A song composition (an idea) is different from a cellphone or laptop; a blog article or magazine article or book (an idea) is different from shoes or pants or a tv set. The latter is physical property to which past and present laws and regulations on property rights apply. Thus, IP on song composition, on book (copyright) ownership, on drug molecule, should be abolished, partly because such property right was created and granted by government anyway.

There is one ideologue in the libertarian blog, http://blog.mises.org, Mr. Stephan Kinsella, who consistently argues for IP abolition. And there are many libertarians who also take his position.

I have argued before and I will repeat it again: an idea is private property. This blog, or at least this particular blog article, is owned by Nonoy Oplas, and not by any leftist or centrist or rightist or what have you ideologue. Now it is up to the idea owner whether he/she wants his/her ideas to be shared to others for free, or be protected. If he wants to share it for free as it is part of his educational advocacies, then fine. If he wants the use of his ideas, his composition and invention, to be protected somehow, then it should be respected.

To argue that owners of ideas, composers of famous songs, authors of fantastic scientific or academic papers, inventors of important drug molecules, should be coerced, should be forced and arm-twisted, to share their inventions for free to other people, is plain dictatorship. How can such attitude be considered as advocating individual liberty?
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4 comments:

Edgaras said...

Hello, sir, have you at least read Kinsella's "Against Intellectual Property"? You seem very confused about all the problems that many libertarians have with IP.

It's a free book, I can give you a link http://mises.org/books/against.pdf

Anonymous said...

Do you own the "idea" of writing a blog? If not, I hope you paid for permission.

The issue is much more complicated then you make it out to be here... there have been many great discussions of the issue over at mises.org, in addition to the link Edgaras gave above.

Paul said...

Actually, IPR abolition does not advocate coercion in sharing ideas. The “arm twisting” you are referring to is compulsory licensing, which is coercion. In the absence of IP, no one would be required to divulge their trade secrets, for example.

The point of contention is whether IP is property at all. You can’t simply say that anti-IP people are advocating property right violations. You have to demonstrate that ideas are actually ownable in the first place. To claim that anti-IP is violative is like saying “people have a ‘right to education’,” and then claiming that if the poor are not subsidized, this constitutes a

violation of their right to education. It's arguing in circles.

I would maintain that ideas are not ownable. Hans Hermann-Hoppe points out that IP is not only illegitimate, but it is actually CONTRARY to physical, scarce property rights. When you claim ownership of an idea, what you are doing is actually claiming control over what other people do with their physical property. This means a person is unable to truly exercise their control over their computer when prohibited from downloading this or that. Or, one does not actually have control over certain owned physical materials meant to be used to create medicines, because of IPR restrictions.

On the other hand, if someone imitates a certain idea I have, the physical property for which I make use of the idea is not diminished at all, no matter how many people share this idea.

Ownership of things has more to do than thinking of the use of these things. Just as an employee should not be allowed to own an office just because they work there, a person who thinks of an idea should not be allowed to stop people from controlling their respective properties. Otherwise, we might as well follow the Marxist creed of 'I labor, therefore I own,' paraphrased as 'I think, therefore I own.' IP is thus revealed to be Marxist.

I also mention in the book I gave you that the logical inconsistency of IP as property is quite apparent when an architect is commissioned to build a house. If we are to be consistent with the belief in IP, this would mean that the very house he is designed to make is his to control. Only by some logical wrangling does the actual owner retain title.

Anyway, food for thought to help you refashion your arguments. ;)

Nonoy Oplas said...

Hi Edgaras, I have not read his book yet, I just checked Kinsella's articles in the mises blog. If I will pursue writing a book later on IPR, I shd read that book. Thank you for the links.

To Anonymous, Yes, I own the idea of writing this blog. Others have the idea of not writing a blog and pursue other work or passion. Yes, I also asked permission from blogger.com, the owner of blogspot.com, to write this blog. But blogger did not charge me (wordpress also don't charge their subscribers), thanks to them.

Hi Paul, if no one will be required or forced to divulge their trade secrets, then it's IPR forever, no timetable of mandatory opening of trade secrets. I like that.

Ideas -- like a song composition, a blog or journal article, a picture, a drug

molecule, a tire molecule, etc. -- are ownable. But it is up to the owner of ideas, again, it is up to the owner of ideas, if he wants his ideas to be protected somehow or be shared for free. If he is willing to share it for free to all, then the anti-IP case is moot and academic. If the idea owner wants protection, whether government protection or a private industry association protection, then it should be given to him.

The idea of having an IP should spur more innovation, more invention, more competition among idea owners. If there are 1,000 rock songs on Philippine government corruption, then there are 1,000 copyrights or song IPRs. Now some may wish to go more specific: 200 rock songs on military corruption alone, 175 rock songs on police corruption alone, 300 rock songs on government education corruption alone. And you have thousands of IPRs and song copyrights on thousands of rock songs on government corruption alone. Include thousands of ballads, jazz, folk songs, on government corruption and the volume of copyrighted songs, the volume of owned ideas, is limitless. Why deprive the idea owners of having the right to say, "This is my song, I composed it, I own it. He wrote that song, he composed it, he owns it..."

Part 2, April 20, 2011

After writing On intellectual property abolition yesterday, it attracted 3 comments. See my reply to them in the comments section of the article.

I also posted yesterday that link in the comments section of Stephan Kinsela's article, The Four Historical Phases of IP Abolitionism. There were several other comments after I posted mine. I post 3 of them below:

(1) Edgaras, April 18, 2011

Who argues that nonsense? To argue, that people should be forced not to act with their property as they see fit just because some "scientist" had this precious idea first and would like that no one used it in his "way" – that is dictatorship. Owning ideas is owning other people. And this is argued by most of the IP proponents. Or at least, it's a logical conclusion of their ideas.

(2) Stephan Kinsella, April 18, 2011

They aren't forced to share it. If they want to keep it secret, fine. but if they decide to make it public–for example by selling it–then they cannot whine when others use the information.

(3) Edgaras April 19, 2011

Abolishing IP won't prevent producers from producing. Reality debunks such inane claims by thousands of examples. I hope I don't need it to mention… Take for example all the open source and creative commons music. Take for example free books by many authors who profit from donations. Jeez.

Below are my rejoinders to those comments.

On #1. "Owning ideas is owning other people." I find zero connection between the two. I say for instance, "I own this blog." Did I own other people, or did I control their lives? They too, can also start and own a blog of their own, it's fast and free, courtesy of blogger, wordpress and other sites.

On #2, by forcing the abolition of IP, proponents are forcing the sharing of ideas that some idea owners may not be happy to do without some compensation or even citation. Owners of idea -- a song composition, a picture or cartoon, a new drug molecule, a new tire molecule, etc. -- decide whether they want their ideas to be shared for free with the rest of humanity, not some ideologues or government bureaucrats. If idea owners want their intellectual output be used publicly in exchange for compensation, say a new drug or a new tire, then they should be respected. IP abolition proponents want total disrespect for ownership of ideas.

On #3, "Abolishing IP won't prevent producers from producing." True. But keeping IP will also encourage actual and potential producers to produce more. Rock band A composed and produced 500+ songs, all copyrighted. Rock band B composed and produced 400+ songs, all copyrighted. Rock band C composed and produced 75

song, all copyrighted... Rock band Z produced and composed 200+ songs, and so on.

Currently, people are allowed to say, "I composed that song, I own it. But other people can also sing it, play it, knowing that it was me who originally composed and sang it." The IP abolitionists argue that ideas, like a song composition, cannot be owned. Thus, no one can say that "I composed that song, I own it." To me, that is unfair.

Meanwhile, below are portion of the long comments made by Paul, who is a friend and owns Colorful Rag blog. He wrote,

...I would maintain that ideas are not ownable. Hans Hermann-Hoppe points out that IP is not only illegitimate, but it is actually CONTRARY to physical, scarce property rights. When you claim ownership of an idea, what you are doing is actually claiming control over what other people do with their physical property. This means a person is unable to truly exercise their control over their computer when prohibited from downloading this or that. Or, one does not actually have control over certain owned physical materials meant to be used to create medicines, because of IPR restrictions...

I also mention in the book I gave you that the logical inconsistency of IP as property is quite apparent when an architect is commissioned to build a house. If we are to be consistent with the belief in IP, this would mean that the very house he is designed to make is his to control. Only by some logical wrangling does the actual owner retain title.

If I am a struggling rock artist and I hope to earn some stable income (if not become rich) someday by composing and singing more rock songs on more subjects, then I wish that some protection be given to me so that I can be compensated for my ideas, for my effort. The IP abolitionists say that I am not entitled to claim ownership of my own song compositions. Implying that every Tom-Dick-Harry can sing any or all of my songs, perform rock concerts or do big product endorsements on my songs, and not a bit of originality and authorship can be traced to me.

One implication of this proposal is to encourage plain copying and laziness in innovation. Why innovate and invent on some useful products like a new life-saving medicine or a new race track-hugging tire, which requires huge amount of money, research work, multiple clinical trials, and take many years to finish, when the inventors cannot even be allowed to claim ownership of their own inventions?

An architect who designed a house can only claim ownership of the design, the one on paper, not the house itself. But since the owner of the house already paid the architect, it is the house owner who will decide later whether he will follow all the designs made by the architect, or introduce new revisions, or throw away the design and commission another architect or other artists to do the job. Whatever the house owner will decide later, the architect can afford to be indifferent as his idea, the house design, was already compensated for.

I repeat, private property is private property. It is not communal or government property, whether physical property or intellectual property.

Part 3, April 21, 2011

A number of libertarians call intellectual property rights (IPR) as intellectual monopoly rights. They argue that IPR is "evil because granting artificial rights to non-property restricts everyone else's property rights."

One such article is by Jock Coats in the Adam Smith Institute blog. Coats' short paper today, Intellectual property: an unnecessary evil, argues further that

..."intellectual property" is a contemporary conceit to conceal crude market interference through state granted privilege with the flimsiest gossamer of respectability. The primary origins of patents lie in maintaining the state's coffers, and of copyright in state censorship of ideas.

Property rights arise from a desire to prevent conflict over scare resources. Ideas, patterns, recipes and processes are non-scarce. Intellectual monopoly laws impose different time periods and restrictions...

19th century libertarians ranked Intellectual Monopoly as state created privilege that impoverishes the majority. We should heed them: they are still destructive, unnecessary, statist and evil.

It was a friend in facebook, a young German liberal thinker, who posted that article. I mentioned to him that top anti-IP libertarians like Stephan Kinsella want the abolition of all forms of IP -- copyright, patent, etc. They argue that ideas can never be owned. If I am an aspiring rock or rap star, I composed several good rock/rap songs, then I cannot say "I own" those songs. My friend replied,

You will still be recognized as the producer of that song and be able to make money with it, even without IP protection (contract law is sufficient). And with modern technology it is becoming increasingly difficult to protect IP and in the process of protecting them you are causing more harm to the principles of liberalism/libertarianism than otherwise. And by composing a rap song you will undoubtedly use some other form of IP in the process and should you not pay royalties to the inventor of rap? That seems absurd. And your song won't be scarce, if I copy it, I'm not taking anything away from you. Earning money will be more difficult for you, I grant that. But doesnt that create an incentive for quick production of new IP? This will create more dynamism and make it more difficult for monopolies to emerge, a major criticism of market-sceptics. And physical property - which must be protected - is being attacked on by protection of IP, as the ways you can use the former can be limited through IP protection.

I suggested in my earlier paper, On intellectual property abolition, part 2, that it should be up to the IP owner if he wants to share his invention for free to all, or to be protected. Very often, the cost of enforcement is much much larger than the benefits of full enforcement, say of fighting song piracy, so many IP owners, except the big ones like The Beatles and U2 perhaps, won't bother full enforcement of their IPR.

I think the bigger debate on IPR is on expensive inventions like drug molecules. If the cost of inventing a new beer molecule (or compound of molecules) is not very high, then the new beer inventor/s may not press for full IPR protection. But in the case of drug molecules where the average industry cost of producing one successful molecule (successful meaning safe, hurdled dozens of clinical trials, and effective as killer of a particular disease) is up to $1 B, then such inventors will try to seek full IPR protection whenever possible.

One big opposition to IPR by the libertarians, liberals, anarchists and other shades of free marketers, is that it is a government (usually the Intellectual Property Office) that gives IPR. If that is a big problem for them, then it can be solved by having a private entity, say a federation of industry players, that can give such IPR. I discussed this in my other paper, IPR and medicines, part 7.

Do the anti-IP people consider a molecule or an atom as "non-tangible"? I still have to dig about this. But for me, a newly-invented molecule (or compound of molecules), say a drug molecule, tire molecule, beer molecule, etc. are tangibles. Water is a tangible object, it is composed of 2 atoms of hydrogen and 1 atom of oxygen (H2O). See also my other paper on the different molecules currently in R&D stage to treat prostate cancer alone, IPR and medicines, part 8.

The more directly related to health a molecular invention is, say a new anti-cancer drug, a new weight-loss food supplement, a new skin whitener, etc., the bigger the cost of inventing them. Inventors and manufacturers have to entertain the possibility that they can be sued someday by their customers if the latter will suffer some adverse health results, or at least if the promised "miracle" did not happen. If there is huge costs in the R&D of such drugs or food supplement or ointment, if there is huge costs in possible future legal battles over the safety of such new products, then the inventors and manufacturers need to price their new invention at a higher level, via the temporary monopoly period (a patent, copyright, etc.).

Some anti-IP libertarians can unwittingly merge ideologically with the leftists and socialists in arguing for the eradication of IPR in drugs. The higher price of new and patented drugs compared to off-patent and older ones is, for them, proof of the evil of IPR. And this is another dangerous mistake that free marketers from whatever shade should avoid committing. Pricing is a private property right. It can never be communal or government right.

Part 4, May 12, 2011

The attack against intellectual property (IP) and IP rights (IPR) is coming from all directions, particularly from the socialists (social and collective property rights, not private property rights) and the libertarians, the anarchist wing in particular (ideas cannot be owned, IPR are state-issued that further expand the state). I do not know how long this trend has been, I just notice them as some friends just email them to me, or post them in my facebook wall.

One such literature is Bourbon for Breakfast: Living outside the statist quo by Jeffrey Tucker of Mises Institute in Alabama. The (3rd) chapter on Technology is about IP, although the focus is on copyright of books.

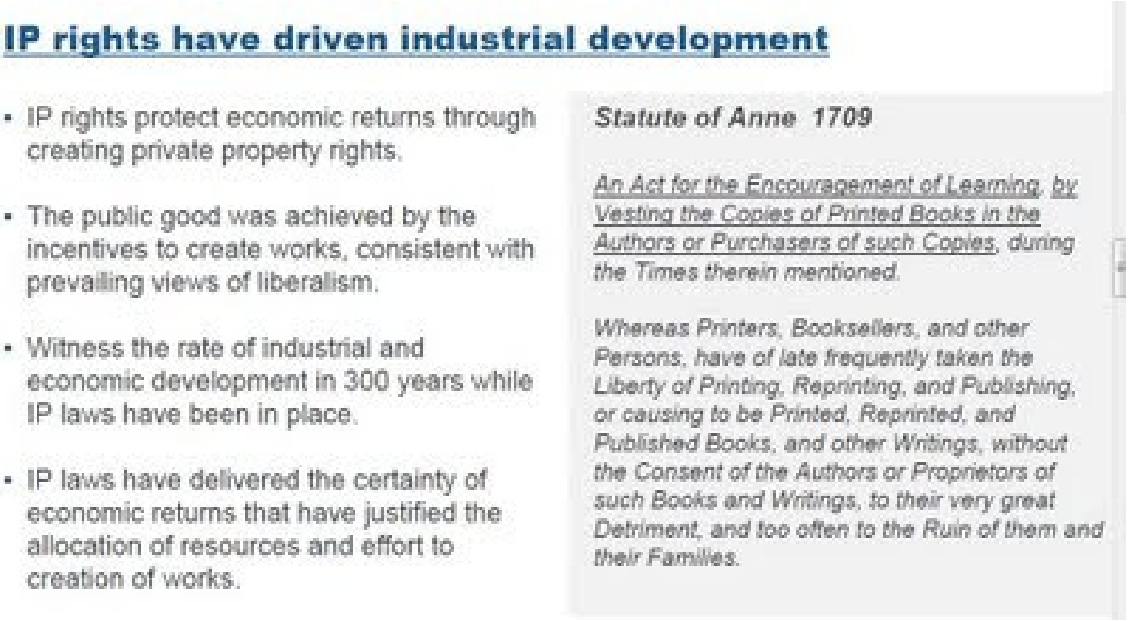
I have earlier discussed another anti-IP article by Jock Coats of Adam Smith Institute in London in my earlier paper, On intellectual property abolition, part 3. I noted there,

Do the anti-IP people consider a molecule or an atom as "non-tangible"?... for me, a newly-invented molecule (or compound of molecules), say a drug molecule, tire molecule, beer molecule, etc. are tangibles.... Some anti-IP libertarians can unwittingly merge ideologically with the leftists and socialists in arguing for the eradication of IPR in drugs. The higher price of new and patented drugs compared to off-patent and older ones is, for them, proof of the evil of IPR. And this is another dangerous mistake that free marketers from whatever shade should avoid committing. Pricing is a private property right. It can never be communal or government right.

Last September 30, 2010, during the 4th Pacific Rim Policy Exchange in Sydney, Australia, one of the panel discussions was on **IP, Jobs and the Economy**. One of two speakers there was Michael Williams (in this picture) of Gilbert + Tobin law office in Sydney. His paper was entitledResisting populist calls for a wind back of IP laws and showing leadership in the promotion of IP laws.

I show here 3 of his 7-slides presentation. Click the slides to get a larger image.

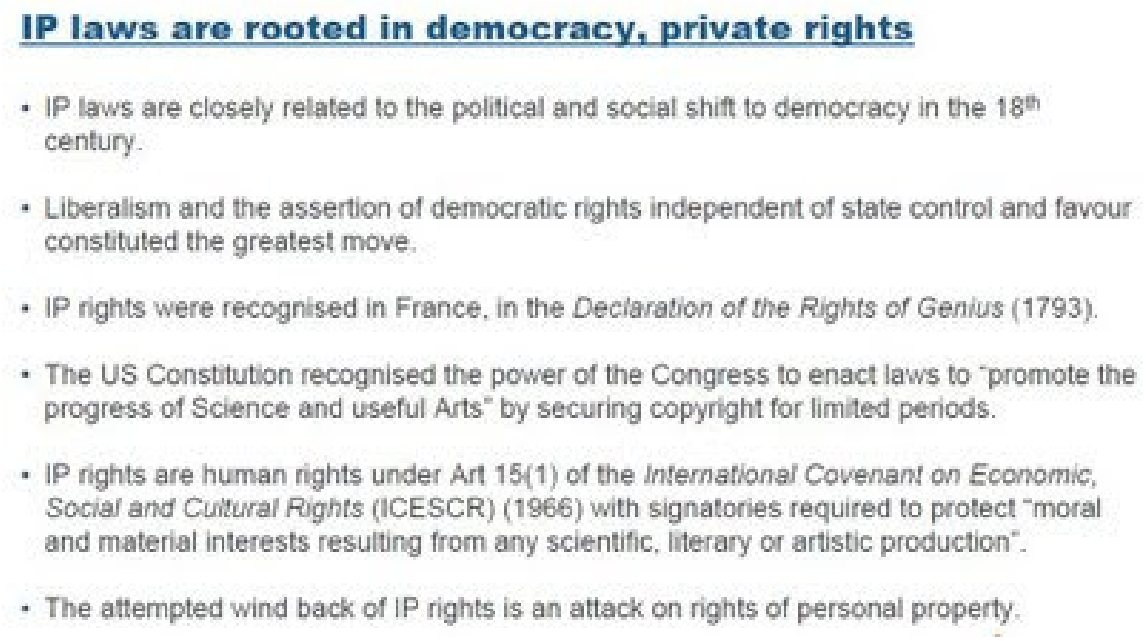
Mr. Williams' concern though, is more with the socialists and anti-capitalist individuals and groups, especially academics, who regard private property rights in general, and IPR in particular, as extension of exploitation and mass disenfranchisement by capitalism. He did not discuss the equally anti-IP sentiment by some libertarians.



Here he showed one law enacted 302 years ago, the**Statute of Anne 1709**, giving property rights to authors of printed books. I observe from several literatures of the anti-IP writers, their argument that "IP = monopoly". Since monopoly is evil, then IP is also evil. I will grant that this is a correct proposition if we are talking about an

industry or sub-industry monopoly. Say a monopoly in telecommunication, a monopoly in music industry, monopoly in movie industry, and so on.

But I think there is nothing in the IP laws that says "All rock songs (or all action movies, all science fiction books, all anti-hypertension drugs, all racetrack tires,...) are copyrighted by _____ company for its exclusive use, sale, transfer, for __ years." What the IP laws say is that "one copyright for each rock song by each rock band/singer" and there are 1,000 or 100,000 rock bands and singers worldwide producing 100,000 or 1 million rock songs.



Mr. Michaels correctly asserted that "The attempted wind back of IPR is an attack on rights of personal property." An IPR vested on each author, or composer, inventor, innovator, does not automatically mean that each author or inventor will go for exclusive use and control of his IP work or molecular invention. It is possible that he will waive his IPR and monopoly right of use and share his work with the rest of humanity for free.

The security of an IPR is reserved for those inventors and composers/authors who think they are better recognized and compensated (financially, intellectually, culturally, etc.) if an IPR is granted upon them.

Mr. Michaels concluded that "The recognition of IPR is consistent with the pursuit of democracy, property rights and economic development... Now is the time to strengthen IP laws to drive technological development in the digital age and to provide certainty for investment in the future."

Amen to that.

Part 5, May 15, 2011

After posting Part 4 of this discussion series on IP in my facebook wall, it attracted a number of comments. For brevity purposes, I will enumerate the comments and questions from 6 friends – Froilan, Say, Siegfried, Marvin, Dominic and Donaldson. Here they are:

1. Here's a libertarian's comment on this group: "Lets put it this way... I bought a book from a great author and I love to share it with my friends and relatives for free, re-print it using my paper, ink, printing machine, my valuable time and produces 100 the same copy with the full name of the author and title. And the author is nowhere to be found or maybe he's already dead. Still I have no right?" SO EVIL! http://www.facebook.com/home.php?sk=group_196382230406190

In a society that respects property rights, which include IP rights, no one may infringe upon anyone's right (copyright, patent right, etc.) however noble the intention. But in an anarchic society, reprinting copies of an author's book even without the latter's consent either for good intention or for profit is deemed perfectly "moral" [and legal].

2. What does one actually own under an intellectual property rights regime? I believe ownership of property can only be physical ownership. Under a property rights regime, I own physical stuff like chairs and houses. Under an intellectual property rights regime, what do I physically own?

3. As to IPRs, I do feel they are materially different, and intrinsically weaker, than property rights in land and goods, simply because land and goods can only be used by one person at a time, while intellectual goods can be used by multitudes simultaneously. IPRs sole justification is thus a claim on the fruits of one's labour, which is important but has to be balanced by the need to avoid socially harmful extended monopolies that pre-empt potentially beneficial markets. There is considerable scope for misuse when IPRs are claimed without an intention to use the invention, just to pre-empt competitors, or when farmers are not allowed to produce their own seedgrain from patented seeds, to cite two notorious examples. And the extension of Disney's IPR to Mickey Mouse by the US Congress shows how open this all is to political manipulation.

4. I agree with your blog's general direction from an evolutionary economics (neo-Schumpeterian) point of view.

In the present world, much 'intellectual property' is the result of conscious effort and work not just of individuals but also of institutions like R&D laboratories or research universities - new knowledge comes more and more from the work of teams. Some form of IP protection provides incentives for such innovation work to happen. Societies that provide the fairest protection, like the U.S., Switzerland, EU, become the most innovative and therefore best able to deliver rising living standards to its citizens. Two examples:

a) For drugs and medicine, the safety and efficacy standards of the U.S. Food and Drug Administration (FDA) to protect the populace from quacks and snake oil salesmen require a fixed stress test period of seven years that is quite expensive

and a big barrier (and still gives incomplete protection for cases like mutative risks from toxic compounds - mercury- or lead-based - that accumulate in the parent but affect the offspring, i.e. thalidomide or nicotine/saccharine that are consumed in minute quantities and take up to thirty years to become high risk of local cancer to the consumer).

If one agrees that the FDA provides value to society, in concept, then drug developers ought to be given enough time to obtain returns on their directed effort to develop drugs.

Even this reasonable period may still not be enough without government spending on the science research (not just application development) that requires finding new and basic knowledge that are not appropriable to discoverers, not in the best interest of society to provide temporary monopoly cover, or too expensive for even large corporations or countries to invest. Four examples - (a) Manhattan project for national defense in the development of the atomic bomb, (b) DARPA project for alternative distributed command-and-control channel in case of nuclear that was eventually released to the public domain in 1995 when risk from war with the Soviet Union to become the Internet/WWW, (c) CERN collider in Europe to discover the behavior of atomic particles for leading-edge Physics, and (d) mapping the human genome for future development on next level gene-based drugs.

b) Thus far, patents that provide temporary monopoly protection for about seventeen years (that in the case of drugs 7-10 years are already used in the approval process) and seem to be the fairest and at the same time most advantageous to society in providing incentives for innovation.

Obviously, there is some administration needed to do this in behalf of the total population and thus taxes to pay for such administration. As mentioned above, the U.S. patent system, on the whole, provided fair protection and created the richest and most innovative society.

With the recent crises, some budget proposals are made to gut the U.S. Patent Office under the general ideological rubric, without looking at the details, of creating small government.

Let us watch the reduction of U.S. dominance in having 19 out of 20 top universities in the world and the migration of research laboratories overseas now happening (as pull in) because of the search for talent but maybe accelerating in the future because of lack of IP protection from patents (as push out).

5. So I'm going to warn a friend who is passionately creating and innovating a device that will surely help his father because of disability. He might get sued…. As Mr. Michaels concluded that "The recognition of IPR is consistent with the pursuit of democracy, property rights and economic development... Now is the time to strengthen IP laws to drive technological development in the digital age and to provide certainty for investment in the future."

Are we asking here for more Government intervention? I think the drive for technological development and advancement will come from the market, the competition, not from more regulations.

6. The intellectual property regime is full of grey areas.

Here are my response and rejoinder to the above six comments and questions.

On #1, I think that even if the author is alive, is around nearby, he won't mind that his book is being copied and distributed for free to more people. What he would object would be if his book is copied and sold for a good price by some guys.

On #2, In the IP regime, one owns ideas, an invention, a composition. Ideas are ownable. For instance, 1 million rock songs from 100,000 rock bands and singers worldwide, 1 million copyrights (on each of those songs). Invention of drug molecule to control if not kill breast cancer, such molecule is a product of hard work, huge investments, long R&D work, involving several dozen scientists. In a No-IP regime, anybody can also claim, "I also invented that useful drug molecule" even if they spent not a single $ for its discovery.

On #3, Patented seeds number in millions. Rice seeds in the IRRI seed bank alone, should be several tens or hundreds of thousands, each may be patented. The reason for the expansion of so many different seeds is biotechnology and agri- or bio-engineering. The seed patent system has encouraged thousands of seed scientists to invent new breeds, new varieties, with very specific properties. Say a rice with vitamin C, a rice harvestable in just 2 1/2 months, a drought-resistant rice that can survive with just few days of rain up to harvest. On Mickey's patent, thanks for it, other cartoon producers simply say, “So we cannot use Mickey for our tv program? We will just invent our own cartoon characters.” That is why Winnie the Pooh, Tigger and Pooh, Dora, Dibo, Pocoyo, Pororo, Angelina Ballerina, Chuggington, Little Einsteins, Barbie, and several dozen other cartoon characters were invented. All competing with each other, and little kids today know more cartoon characters than 2 or 3 decades ago. The IP mini-monopoly system created more and more products and services, more innovators, all competing with each other.

On #4, Amen to your points, Marvin.

On #5, Eon't warn your friend, encourage him to pursue it. Each invention, especially health related, requires some form of "clinical trials". If he succeeds in his invention to help his father, he can show it as proof, he can go to IPO and register his invention for IP recognition, only if he wants it. Or he can share it with the rest of humanity, no problem on both actions. Re Michael Williams' concluding note, No, no need for "additional" government intervention. The interventions and regulations are already there. What he is referring to, is for governments not to bend to the anti-IP academics and socialists to relax if not abolish the IP system.

On #6, Yes, IP has lots of grey areas. But if we focus on "more private ownership, more capitalism; more social ownership, more socialism", I think we can reduce the grey areas and limit the debate to a few issues.

Part 6, May 16, 2011

Below is a continuation of my debate with some libertarians who are anti-IP. Specifically with Say Peng, a friend in Singapore. Posting his comments with his permission.

Say: Nonoy, do you agree that ownership of property can only be physical ownership; if you do, then since ideas are intangible, how does one own them?

Nonoy: Say, I already said above, ideas are ownable. I own a blog, it's intangible. Would anyone say now that I cannot own it? If they persist so, then who owns httpfunwithgovernment.blogspot.com? Government? UN? the socialists? Follow up question: do the anti-IP libertarians consider molecules as intangible? Scientists and inventors create and invent new molecules or compound of molecules.

Say: I believe Blogger, which is currently owned by Google, "owns" your blog. A blog is a type of service, which explains its intangibility; it is a service which result from the workings of physical computers and whatnot. So the people who owns the computers sustaining the blog are its original "owners". And because you are using a service, you do not own anything.

Molecules are tangible, obviously. Scientists who create new molecules own the molecules that they have in their possession, but not the concept or idea of the molecule; which means, for example, if I invent a new chemical compound called Sodium Trioxide, I do not own the chemical formula NaO3, but only own the NaO3 molecules that I have in my possession.

Nonoy: Google owns blogger, true. Google owns and controls my blog, adds or removes content, allows or disallows reader comments, false. It is that private ownership of something that allows people to be creative. The Philippine govt, the Philippine "collective", owns the portal, www.gov.ph. What do I care about it? That portal has little or no creativity, only press releases of the national bureaucracy.

Now to molecules, it's good that you admit that molecules are tangibles. But such molecular inventions are governed by IPR, that's why new drug molecules are patented. The pharma or biotech companies have their own trademarks, another form of IPR. So what's wrong with granting patents to a new drug molecule that was invented by scientists? What's wrong with granting a trademark to companies? Why insist on the abolition of IPR?

Say: "Google owns and controls my blog, adds or removes content, allows or disallows reader comments, false." This is only false if you've entered into a contract with Google forbidding so. Otherwise, Google holds exclusive control over the blog.

It's not the drug molecules that are patented; it's the chemical formulas of the drug molecules that are patented. What's wrong with it is that nonviolent people who use the same chemical formulas to create the drug molecules with their own chemical and technological tools are met with by violent intervention from the State. Just imagine: If the person who invented sulphuric acid had patented its chemical formula,

that would mean that anyone (from chemistry students in schools to industrial scientists in chemical companies) who created the chemical, using their own stuff, would be penalized. That's what wrong.

Nonoy: Google, fb, yahoo, twitter, etc. have their own terms and conditions. Once you click "I accept", that is the contract between you and them. By having its own IPR, by having its own trademark, google, fb, youtube, yahoo, etc., they become very innovative, very efficient, and we are reaping their efficiency, like these free fb accounts. Isn't it wonderful how the IP system that protects them causes them to become efficient? About drug molecules, wrong. Check my earlier paper, "IPR and medicines part 8", I enumerated there some molecules that are patented -- abiraterone acetate, azazitidine, befetinib, cixutumumab, docetaxel liposomal, enzastaurin, intetumumab, ixabepilone, lenalidomide, nimotuzumab... these are not chemical formulas, they are drug molecules. So to treat just one disease, prostate cancer, I mentioned there 101 new molecules under various R&D stages. Anyone and everyone can create his/her own drug molecule, no copying needed, so long as they have the scientific capability and financial resources. What's worng with that system? Why insist on the abolition of the IP system that encourages more and more people and companies to become inventive and innovative?

Say: I never read the terms and conditions set by Google and Hotmail. I honestly doubt anyone reads them. But yeah, it's a contractual agreement.

Drug molecules are chemical molecules, and how would one patent them if not by patenting their chemical formulas? There is nothing wrong with people creating their own drug molecules, but what if I want to produce the drug molecule that you invented instead? In order to do so, I have to use the drug's chemical formula, which is an intangible concept which you therefore cannot own, and my own chemicals and machinery. I have taken nothing from you by force; yet you would, by enforcing IPR, set the State's violent mechanism upon me and prevent me from doing what I want, nonviolently, with my own properties. How does this system protect my propertarian liberty?

Nonoy: To treat breast cancer, there are probably more than 2,000 different drug molecules that have been invented -- off patent and have hundreds of various generic brands already; patented and marketed, and patented but still not marketed, in various R&D stages. If you insist to use the drug molecule that I invented, no problem, just buy my drug, period. If you think my price is very high or the effectiveness of my drug is suspect, then just go to another manufacturer and buy his drug using a different molecule. But if you insist to really use my drug molecule, the raw materials I got, say, from innards of cows or pigs, then just innovate a little, get raw materials from innards of chicken or ducks or tilapia, and produce your own molecule. The IP system really encourages endless, limitless innovation and imagination. Why insist on abolishing the system?

Say: "If you insist to use the drug molecule that I invented, no problem, just buy my drug, period."

It's not about buying your drug, which means buying ownership of a physical item; but about "buying" the chemical formula of the drug which is non-physical and therefore cannot be owned, sold, and bought.

I don't really know if the IP system promotes innovation; there are disputations regarding it and I haven't made up my mind. But I am against it currently because of its immorality; it is in conflict with tangible property rights.

Nonoy: "I don't really know if the IP system promotes innovation." -- I already explained it above: millions of patented seeds, with tens of thousands of rice seeds alone; dozens and dozens of cartoon characters aside from Mickey Mouse; thousands of drug molecules invented on each of major diseases (prostate C, breast C, colon C, hypertension, cardiovascular, stroke, etc.). Millions of songs copyrighted, millions of books copyrighted. And see the important trademarks -- google, fb, youtube, yahoo, live, twitter, wordpress, baidu, naver, etc. -- and all the efficiencies and free social networking and search engines they give us for free.

To be continued...

On another note, another friend in facebook, Sebastian, posted in my wall the book, Bourbon for Breakfast: Living Outside the Statist Quo, by Jeffrey Tucker of the Mises Institute, Alabama, USA. Sebastian wrote a short note, Some more thoughts for you to disagree with over IP protection ;)

I thanked him for that link. I told him that I already mentioned this book in Part 4 of this discussion series. I noted how the arguments of the socialists and some libertarians on IP are so similar.

Sebastian replied, “I don’t think socialists would describe IP laws as monopolies granted by and in connivance with the state, would they? As I understand it, this is not an attack on property itself, there is a big philosophical difference between physical and intellectual property. You should also discuss this book on your blog: http://www.scribd.com/doc/51833371/Against-Intellectual-Monopoly.

I replied, “Yes, socialists consider IPR like patents as monopolies granted by the state. See how the left formulate their campaign against drug patents, "Patients over patents".
I saw that book earlier, especially the part on "simultaneous invention". The authors are wrong, there is NO conflict in simultaneous invention, as I discussed here, IPR and medicines, part 8. 101 different new drug molecules being developed just to treat prostate cancer, excluding old drugs that are still patented or off-patent already. There are endless possibilities and opportunities to inventors and innovators, thanks to the IPR system.”

Part 7, May 18, 2011

Further continuation of my debate with a young Singaporean libertarian, Say Peng.

Say: Where is the evidence to prove a causal relationship between IPR and the creation of all that you listed above? That is to say, how do you know that all the above inventions and innovations wouldn't happen in a non-IPR world? This issue is still disputed, as I've point out.

To give you a counter-example, about the time of the Renaissance, where copyright laws were non-existent or weak, nevertheless, this did not stop artistic and literary creations and innovations. Shakespeare, Milton, Chaucer did not stop writing because of weak or non-existent copyright laws, did they?

Nonoy: Proof? All those big and monster companies in music and movie, agri-business and biotech, books and magazine publishing, automobile, pharma, etc., are in developed economies where the rule of law, where IPR is strictly protected. Are thosehuge companies found in the Philippines, Indonesia, Myanmar, Vietnam, Somalia, etc. where counterfeits, fakes and copying are rampant? I dont think so. People will still write books, invent new products, with or without IPR protection. It's just that there are more innovators, more inventors, in countries where IPR is strictly protected than in countries where IPR is a joke or not strictly protected.

Say: Indeed, you realize that the media and printing businesses today are dominated by the few "big and monster" conglomerates and corporations--oligopolies who finance the politicians within government to push the IPR agenda so that they may continue to keep out potential competition and dominate the industry.

You list 5 countries where those huge companies do not operate in, not realizing their absence in those countries are due to different reasons....

Look at the origins of intellectual property rights. They were grants for monopoly privileges--the monopoly of intangible ideas and concepts--by the monarchical government, which, when enforced, entails exacting force against nonviolent people doing peaceful things with their own property.

Nonoy: Supposing IPRs will be granted by an industry association, to be respected by industry players. Govt is out. Still an unacceptable situation?

Say: It's acceptable only if it is voluntary, which includes the choice to opt out and not suffer any violent retaliation for nonviolent behavior.

So I do see a possibility of an "intellectual property" social contract, in which it becomes common practice through habit not to copy wholesale the conceptual designs and whatnot of others, and that anyone who violates this social contract will be ostracized and no one would want to do business with him, and so he will be compelled to respect the IP social contract. All that can happen without the initiation of force from the state that current IPR laws entails.

Nonoy: New trend: libertatrians and anarchists' main enemy is supposed to be the state. Now, private capitalists, private individuals and inventors who want protection of their own invention are the big enemy of libertarians and anarchists?

Say: The enemy is the state that initiates violence upon peaceful people. The moral state, which is a state funded voluntarily if I may add, will defend the physical property of people against theft, but not a kind of property that does not exist physically in the material reality but as mental projections from our minds.

Nonoy: I am a rock star, I composed several good rock songs. I want my songs to be protected from some copycatters who they record my songs and do concerts from them with zero recognition of me and get all the money and fame. Now I am an enemy of the libertarians? Why don;t you compose your own rock songs too, instead of spending your energy attacking me for seeking protection of my own invention, my own song compositions?

Say: You will be an enemy, if you want to unleash state violence on peaceful people. But the thing is, you will get some recognition, if the people who copied your music go famous. I have many such examples, from the era of Mozart to Madonna. You won't get as much attention as them, but there will be recognition. Their fame is after all based more on their interpretation and performance of your lyrics than on the lyrics themselves.

I could compose my own songs, but I might not want to. I just want to copy others. I might be deemed a lazy freeloader within the industry, but I haven't used force against you.

Nonoy: People who do nothing but copy my good rock songs and make money from them with zero recognition of me are "peaceful people"? Now the world is upside down. If you're too lazy to compose your own songs and just copy my songs for your own enjoyment, fine. But if you copy my songs to do concerts, to record songs under your name, it's ok? Upside down world indeed.

Say: You won't get zero recognition, as I have said; but even if you get no recognition, the people who have copied and performed your songs are still peaceful nonviolent people. Such acts might be immoral and unprofessional according to your ethics, but it does not warrant the state's violent retaliation.

Nonoy: I already qualified above, supposing an industry association will grant the IPR, not the state. No IP system is good for lazy and non-innovative people, you just copy, it's moral and legal, life is good.

Say: And I have already replied to your point about such a potential IPR system above. The key issue is that one must be free to opt out of it and that the industry association cannot initiate physical force to enforce IPR.

Nonoy: No need for physical force. A country's music industry will grant IPR to rock band A, Then rock bands B and C do nothing but copy the songs of A, do concerts on them, make product endorsements from the songs of A, make lots of money. Pure lazy but good marketing guys. The no IP system will expand their rank. But while there is IP system, the music industry association can blacklist rock bands B

and C, tell corporate sponsors not to get their services or they won't get the services of any other music groups in the industry. Just to punish the lazy and non-innovators.

Say: Such an IP system I can endorse.

Nonoy: Then IPR is good. It's just the mechanics how it can be implemented. IPR system will encourage more inventors, more composers, more innovators. The lazy are penalized by exclusivity, so instead of being a lazy copycatter, people would rather become innovators and inventors too.

Say: "IPR system will encourage more inventors, more composers, more innovators."
I very much doubt so. Just ask any writer, musician, artist, inventor: What motivates you to create what you create? I don't think their answer would be "IPR!"

But I do agree with you that the nonviolent excluding process is a good way to discourage copycats.

Nonoy: People invent or compose something because they want to be creative, to produce something original. IPR system protects them from being copied by others who do nothing but copy the works of the successful composers and inventors. IPR discourages the lazy.

Say: When you the "IPR system protects...", as long as it does not include the initiation of physical force, there is nothing above I disagree with.

Nonoy: ok, case close :-)

Say: Indeed. We've come a long way. I presume you've now rejected the current statist IPR system and embraced a nonviolent form of IPR?

Nonoy: In the absence of private sector-granted IPR, I have to support the state-granted IPR system. My interest is protection of invention and composition by their authors if they seek it, not protecting the state itself. Ultimately, industry associations themselves should issue (or reject) IPR applications, and f___ the state.

Say: Do you not think that the means to attain your ends of "protection of invention and composition by their authors if they seek it" should be peaceful and nonviolent? Or do you think that the ends justify the means?

Nonoy: The end does not justify the means. The latter is incidental and can be replaced.

Say: You are now advocating a violent means to achieve your ends of the "protection of invention and composition by their authors if they seek it". Shouldn't you change it?

Nonoy: That's false accusation. What sentence, what paragraph, did I say that I "advocate violent means"? Is it plain paranoia?

Say: Here: "In the absence of private sector-granted IPR, I have to support the state-granted IPR system."

Nonoy: One rule of paranoia says: If you dont like what your opponent says, concoct stories and imaginations. Like he advocates violence, he is going to kill you, he will steal your girlfriend...

Say: I gave evidence, a quotation of yours, to back my statement about your advocacy of using state violence to achieve IPR ends. Perhaps you should clarify my confusion (if it exists) rather than invoke paranoia on my part.

Nonoy: I gave zero statement, zero sentence, that I advocate violence to protect IPR. What's next, that I advocate raising taxes, creating new govt. bureaucracies, new UN offices, to protect IPR? Concoction and imagination is endless.

Say: To prove that you did advocate state violence to enforce IPR, I shall quote you again: "In the absence of private sector-granted IPR, I have to support the state-granted IPR system." A state-granted IPR system is a system enforced by state violence.

Nonoy: I am a rock star, I produced good music. Rock bands B and C do nothing but copy my songs, do concerts, do product endorsements, make lots of money by stealing my songs without permission. I go to the IPO or other govt agencies in charge of IPR in music, they send a letter to rock bands B and C to discontinue their stealing as they can compose their own songs. Some libertarians now say that I am advocating violence. Weird world.

Say: In the first place, it is not the theft of a physical item, and rock bands B and C did not use physical force against you when they copied your songs. Their copying of your songs, regardless of whether you think is moral or otherwise, was a nonviolent act--which does not merit violent retaliation from the state, which you euphemistically describe as "I go to the IPO or other govt agencies in charge of IPR in music, they send a letter to rock bands B and C"--the paper threat backed by the violence mechanism of the state is what it is.

Don't be so glib about state violence. It's not just "they send a letter"...

Nonoy: Stealing song composition for big money is ok, is alright, the song composer should not even complain. Wow. Robbery morality = libertarianism?

Say: Sure, the composer should complain, but he should not unleash state violence upon the copycat. Because, and I keep repeating this over and over again, the copycat has not initiate violence against the composer; the composer has not lost any of his physical property. The copycat took the composer's idea. It does not mean the composer has lost the idea to the copycat. Both of them now hold the same idea in their minds. It is not robbery since nothing has been robbed; no one party has lost property to another party. You are basically saying that ideas can be stolen. (And since you apparently love sarcasm...) Wow, isn't a miraculous kind of robbery in which previously one person owns something, and after the robbery, two persons own it. Really brilliant kind of robbery.

Nonoy: I am a univ. student taking up BS Music, or BS molecular biology. My goal is to produce lots of good music or lots of good drug molecules someday. In short, my entire career, my future, is to produce ideas. Now some liibertarians and anarchists

say that other people can steal my ideas anytime, anywhere, it's perfectly ok, and I have no right to complain whatsoever. Good message. I can never be an anarchist. An anarchist even views the miniarchists as advocating violence. Absolute truth belongs only to anarchists, great.

Lesson: dogmatic anarchists -- I think they're few -- believe that only them are correct; anyone who disagrees with them are lovers of state violence and are advocating violence.