

# Globalization and the Intellectual Property Paradox

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The increased pace and intensity of globalization in recent decades has created great debate in the field of intellectual property. Globalization has helped create new potential property types as varied as digital music files, massive databases of information, human organs, and even the human genetic code itself. These developments have challenged long-standing models of intellectual property ownership. Some observers believe emerging properties should be regulated through existing models of intellectual property ownership such as patents, copyright, and industrial designs. Others argue that regulating ownership of emerging properties will stifle innovation. There are also fears that strict regulation of new property types will have a harmful effect on disadvantaged groups around the globe. A good example of such concern is the case of pharmaceuticals for sick people in developing countries; some feel that inflexible intellectual property rights prevent these people from receiving the drugs they need to get better.

To better understand how globalization has shaped debates about emerging property types, I posed three sets of questions:

1. What institutions have jurisdiction at a global level over intellectual property? Is the concept of intellectual property strengthened or weakened in a global world? How has it adapted to transnational or global processes of invention and ownership?
2. What are the alternatives to a private ownership model of intellectual property, and have they been strengthened or weakened through globalization?
3. What implications do global intellectual property concepts have for individual autonomy, particularly concerning ownership of living organisms and other emerging genetic property types?

Historical debates about intellectual property have been marked by a tension between proprietary and collective intellectual property rights. Advocates of a proprietary model argue that individual ownership encourages inventors, writers, and others to be creative by promising some material reward for their labours. Those who have favoured a collective rights model, often known simply as "the commons," argue that all ideas are inherently social, and should thus be shared with the society from which they were derived. Proponents of collective rights see inventors as conduits of broader social forces who have a responsibility to give back to the broader community. They also seek to protect the "commons" from overuse or depletion.

The roots of modern intellectual property legislation are found in the nineteenth century, when industrialized countries began to pass patent and copyright laws in an effort to generate economic growth and protect their national cultural autonomy. To facilitate international trade, industrialized nations created two important international intellectual property agreements in the late nineteenth century: The Paris Convention for the Protection of Industrial Property (1883), and The Berne Convention for the Protection of Literary and Artistic Works (1886). As new property types emerged through the twentieth century, from radio and television broadcasts to genetically modified plants,

they were absorbed within the framework created by these nineteenth century agreements. The Paris and Berne Conventions still form the basis for global intellectual property law, but they were joined by a new, global institution in 1967, known as the World Intellectual Property Organization (WIPO). WIPO administers international intellectual property treaties, and also serves as site of global interaction and discussion on the legal and philosophical aspects of global intellectual property. Global intellectual property regulations were further tightened after 1994, when the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) came into effect. There are also many national and regional intellectual property bodies which are important nodes in the global intellectual property framework.

While WIPO has recently been overshadowed by debates on the merits of TRIPS, its creation of a Patent Cooperation Treaty in the 1970s is perhaps the most important global development relating to intellectual property. This is because the PCT allows for near simultaneous patent filing around the world, bringing us closer than ever to a "global" patent. It has facilitated trade and innovation in numerous fields, but it has also polarized global North-South divisions. Developing countries often seek to use their numerical superiority in global institutions like WIPO to their advantage, but harmonization agreements like the PCT prevent such action, and leave poorer nations dependent on richer ones for technical expertise and capital. My research shows why developing countries have paradoxically become more dependent on the developed world for technical assistance than they were during the imperial period.

Global intellectual property regulations have also heightened debates over the threat of "bio-piracy," the exploitation by rich nations of the material and cultural resources of poor ones. Broader and deeper global intellectual property regulations have also presented a challenge for emerging genetic property types, from micro-organisms to human beings' genetic code. The application of nineteenth-century principles of intellectual property to such genetic properties has called into question fundamental issues of human autonomy, the right to life, and other key issues of individual and collective identity. Whether the global community can adequately solve these problems remains to be seen.