

15 Intellectual property

Patents and copyrights

In general, it is not against the law to steal someone else's ideas. If a man I meet in a bar tells me how people can become rich, and I publish a best-selling book based on his ideas, I do not have to pay him any money or even mention his name in the book. But most countries do place legal limits on copying the exact words someone has written, the art or music they have created, or the technology they have invented. Such work is known as **intellectual property**. The main legal instruments for protecting it are **patents** and **copyrights**.

In order to prevent a new discovery or scientific process from being copied, it is necessary to apply for a patent. If granted, a patent makes it illegal for others to manufacture or use the invention without permission. However, a patent will only be granted if the invention has not yet been shown in public and if it has industrial application. Ideas—mathematical and scientific theories, for example—cannot be patented. The patent must be carefully worded since it may be possible for someone to copy any part of the process or invention not mentioned in the patent.

Literature, artistic works, computer programs, movies and radio and television broadcasts cannot be patented, but they can be protected by copyright. In most countries, such work is automatically protected when it is created; there is no need to apply for or to register copyright. It is usual to record the date of creation and mark it with the international copyright symbol ©, but this is not essential.

As with other kinds of property, intellectual property can only be protected if ownership is clear. The holder of a patent is often a company rather than the individual scientists inventing something in the course of their work. A copyright is usually owned by the creator of the work—the writer, painter or musician—but like other property, it might be passed to someone else. If a journalist is employed by a newspaper then the articles he writes are usually the copyright of the newspaper owner. The copyright in a movie is owned by the film maker, not by individual writers or performers. The copyright in this book is held by the publishers who commissioned it.

Keeping pace with technology

In recent years it has been difficult for intellectual property law to keep pace with technological change. Video recording, satellite television, and the use of computers have expanded so rapidly that it is becoming difficult to control copying. The main emphasis of recent laws is not to prevent people from copying, but to ensure they pay for doing so.

In Britain, the 1988 Copyright, Designs and Patents Act covers a work of music, art, drama or literature, computer software, for 50 years after the author's death; sound recordings, films, and broadcasts for 50 years after they are made or broadcast; and other writings for 25 years after publication. In theory, the law applies to copying done anywhere in the world. To increase the likelihood of enforcing intellectual property law internationally, there are several important international conventions such as the Universal Copyright Convention, the Bern Convention, and the Patent Corporation Treaty. Whether a country signs and tries to enforce such agreements usually depends upon whether it is likely to gain from the agreement. Poorer countries usually produce fewer inventions and new works of art and literature than richer ones. Consequently, they are more interested in the benefits of copying than the problems of being copied.

The laws of intellectual property usually require anyone wanting to copy something to ask permission from the holder of the patent or copyright. In the case of small-scale use of artistic work, permission is often granted free of charge. For industrial use of a scientific invention, a great deal of money might need to be paid. But most legal systems allow a certain amount of copying even without asking permission.

For example, under the 1988 Act, a play may be performed in private—for example, at a school—along as there is no audience from outside and no one is asked for money to watch. A television program may be recorded only if it is done so that it can be watched at home at a more convenient time. However, it is illegal to tape a record, even if this is for private listening. The concept of **fair dealing** allows someone to make a photocopy of someone else's work as long as this is done for private study and no more than a substantial part of the book or article is copied. But it is not legal to make a large number of copies, for example, for a whole class of students.

Trademarks and trade secrets

Another kind of intellectual property is a **trademark**. Companies often use a certain name or description to help sell their products, or sometimes a symbol which everyone comes to associate with that company, such as the

M design of McDonald's or the shell design of Shell Oil. To prevent other businesses from using their trademark, companies often register them. Another legal remedy is to take out an injunction against a company which has tried to pass itself off as your company by using the same name or similar packaging. The London store Harrod's took out a passing-off action against a small business in New Zealand not only because it was also called Harrod's but because its bags looked similar.

The law provides some help for companies that want to keep trade secrets confidential. In some countries, it is a criminal offense to pass information about an employer's production methods, business techniques and customer lists. In others, it is legal for a contract of employment to include restrictions about giving away or using such secrets, and the restrictions may continue to apply even after the employee has left the company. Some contracts enable a company to take legal action against an ex-employee who tries to work for a competitor. English law recognizes the need for businesses to protect themselves from ex-employees who start up a rival business, but it also puts limits upon the extent that the company can restrict others.

Enforcement is a major problem in intellectual property law. In some case, infringing copyright can be a criminal offense. For example, filming or recording a live performance without permission and for commercial purposes can result under English law in imprisonment for two years and a \$2000 fine. But if the filming or recording is made for private purposes, the performer will have to take out a civil action in order to obtain an injunction or compensation. Copyright holders usually take a practical approach; it would be a waste of time and money to sue every individual who makes a private recording of music. In Germany the price of tape recorders and video recorders includes a fee paid to the Musicians Union and other associations of people likely to suffer from unauthorized copying. Japan has long been criticized by Western countries for not respecting intellectual property rights. Video and CD rental stores even sell blank tapes! But the government agreed in 1992 to put an extra charge on blank tapes to be collected by recording companies.