

Rhetoric and Ideology

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IP and the Knowledge Commons

James Love

The uses of words, terms and
concepts are important

Intellectual property

Richard Stallman complaints regarding use of term intellectual property

- He says
 - IP is a propaganda term
 - Aggregation of terms confuses people (they have “nothing” in common).



What is intellectual property?

- Patents, copyrights, trademarks, trade secrets, but also:
- Broadcaster right, webcaster right, rights of publicity, plant breeder right, *sui generis* database protection, rights in pharmaceutical test data, Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), orphan drug exclusivity, pediatric testing exclusivity, boat hull protections, publication rights, DRM/TPM measures, contractual protections of non-copyrighted materials, protection of traditional knowledge, folklore, access to genetic resources, material transfer agreements, etc., etc.

Richard Stallman on what to call the proposed Broadcaster/Webcaster right

- First, let's not call it a "right"--that term is further blackwhiting. This is an artificial monopoly power, so let's call it a "power", a "restriction", or a "monopoly".
- So what kind of power is it? I think it is like the power of skunk odor: it sticks to whatever it touches, and once it's on you, you practically can't get it off. So how about "skunk odor power"?
- Another idea: the broadcasters want the power to make anything their property if they just touch it. So we could call it "power to steal" or "power to expropriate".

Public Domain

What is the public domain?

- Knowledge that is not owned or controlled by anyone
 - The public domain comprises the body of knowledge and innovation (especially creative works such as writing, art, music, and inventions) in relation to which no person or other legal entity can establish or maintain proprietary interests. This body of information and creativity is considered to be part of the common cultural and intellectual heritage of humanity, which in general anyone may use or exploit.

Wikipedia 3/20/06

Knowledge Commons

“The knowledge commons is the combination of knowledge and information that is

- not owned by anyone (the public domain), or
- which is made available to the public by its owners, for free,
- or which can be freely accessed and used by the public, in areas where rights are limited by legal rules or by custom.

Knowledge Ecology

- Knowledge ecosystems?

Rhetorical Strategies

- Associate words, terms, concepts with
 - Business models
 - Outcomes

PhRMA/BSA/MPAA, etc terms

- Negative
 - Piracy
 - Theft
 - Property
 - Stealing
 - Counterfeit
 - Organized Crime
 - Knock-off
- Positive
 - Innovation
 - Wealth creation
 - Incentive
 - Creative
 - Investment
 - Respect IP
 - Economic growth

The resistance

- Pejorative terms
 - Monopoly
 - Privilege
 - anticompetitive
 - Restrictive
 - Piracy of the commons
- Positive terms
 - Freedom
 - Sharing
 - Access
 - Innovation
 - New business models

Access to Medicine

Access to Knowledge

New paradigms for knowledge goods

- Free software/open source software
- Open access publishing of scholarly research
- P2P sharing of music (with or without remuneration to authors and performers)

Medical Innovation Prize Fund

- Creates private markets for public goods

WHO EB117.R13

- New [global framework] for medical R&D
- [proper balance between intellectual property rights and the public domain]
- [Recognizing the importance of public and private investment in the development of new medical technologies;]
- [reconcile the public interest in accessing the products derived from new knowledge, with the public interest in stimulating invention;]

WTO General Agreement on Provision of Public Goods (GAPPG)