

James Boyle, “Thomas Jefferson Writes a Letter”

Read the article at <https://edtechbooks.org/-TnoN>

Background

“Thomas Jefferson Writes a Letter” provides perspective on the discussions, ideals, and historical events that have shaped our current understanding of intellectual property. This chapter dives deeper into the history of what led us to the current state by introducing the discussions of early influential American founders.

The chapter focuses on a letter Thomas Jefferson wrote in 1813 that succinctly and beautifully captures the heart of the issue of how intellectual property relates to human rights and societal progress.

Key Points

Unlike the first chapter of his book, Boyle spends more time on the legal ideals that early American founders and western reformers supported in their quest to better society. They were striving for both liberty and progress, which they recognized to be somewhat opposing ideals when it came to certain aspects of intellectual property and motivating individuals to create and share.

Boyle focuses on is Jefferson’s declaration that, “patents are a tolerated monopoly” where competition is limited so that one individual can reap the reward of an idea or intellectual resource. Jefferson espoused the idea that there are certain natural rights people are endowed with like, “life, liberty, and the pursuit of happiness,” but intellectual property rights do not fit that criteria. In fact, intellectual property “rights” are a privilege given by society to benefit society, and not unalienable natural rights. Jefferson writes that this monopolistic privilege becomes more detrimental with time and so should be extremely limited in scope and length. Only under certain circumstances should intellectual property rights be tolerated. He pens what Boyle calls the “Jeffersonian Warning” to outline the conditions that need to be considered before enacting intellectual property rights.

The warning is captured in the following bullet points. Instead of treating intellectual property rights like unalienable natural rights, intellectual property rights:

- Are endowed on individuals for an extremely limited period of time and only as long as the privilege brings benefit to society granting them.
- Inherently hinder innovation because they hinder the spread of knowledge.
- Create many questions that need to be addressed after deciding to enact an intellectual property system.
- Cannot encourage a dead person to produce any more creative works. Most people are not encouraged by the rights they might have after death. Extending the copyright term after an author’s death cannot encourage him to create anything. Thus, extending copyright further after the death of an author does no benefit to him while increases costs to society.

Boyle uses the arguments Jefferson writes to reinforce the argument he made in the first chapter of the book – that intellectual property rights are grossly abused and society loses a lot of innovation and progress because of it. Boyle invokes Jefferson and proposes that in order for “invention to work, we need to confine narrowly the time and scope of the state-provided monopoly, otherwise further inventions would become impossible.”

Discussion Questions

1. How do the length of a country's copyrights affect progress and innovation? Is Jefferson's Warning only applicable in some countries?
2. Since making something illegal doesn't necessarily stop it from happening, is copyright really the way to protect intellectual property?
3. Why is the grant of copyright free, but patents are so expensive to obtain?
4. What is the optimal length of a copyright?
5. How can we balance providing sufficient incentives to the creator of a work with the public good?
6. What measures are currently being taken legislatively to reduce copyright restrictions?
7. Who are the stakeholders lobbying for longer copyrights?
8. What are competing incentives to create? Volunteer? Compulsion to create?
9. Would people need to purchase extra copyright years at the start, or could they wait and see how things went?
“To put it another way, if copyright owners had to purchase each additional five years of term separately, the same way we buy warranties on our appliances, the economically rational ones would mainly settle for a fairly short period.”

Additional Resources

For help answering the first discussion question above, take a look at the link, which is the Wikipedia article for “[List of countries' copyright lengths](#).”



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