

## Foreword

The rapid development of the “knowledge economy” has temporarily stalled, but few doubt that it will soon be getting a second wind. This new economy, in which a company’s major resources are its intellectual assets, has undoubtedly moved the topic of intellectual property into sharp focus for decades to come. The notion of intellectual property rights, opposed by many cyberspace libertarians, triggers many elusive questions about the extent and precise nature of those rights. For example, the digital music and movie revolution has swept across the Web, and yet many of the vexing issues raised in the Napster case remain unresolved.

Network and digital technologies also have the potential to usher in a new era of decentralized creativity and public discourse. These technologies have made it so much easier to accomplish the distribution of creative material. So why shouldn’t we celebrate this new found freedom?

Some critics maintain that the traditional property rights system, which tends to “propertize” all forms of information, will interfere with the realization of this ideal. On the other hand, how can we protect the rights of artists and content providers to distribute their creations and receive appropriate payment without preserving traditional copyright law?

Of course, intellectual property issues are not confined to the sharing of digital music files. It is not surprising that access to digital information is becoming a matter of great social and economic import. Poorer countries accuse wealthy nations of “information imperialism,” contending that they cannot overcome the digital divide unless intellectual property rights are loosened considerably. As a result, the battle rages over whether intellectual property should be given strong or weak protection or perhaps no protection at all in the digital realm of cyberspace.

*Intellectual Property Rights in a Networked World* seeks to provide some fresh perspectives on this theme by presenting diverse papers that cover both theoretical and practical concerns. This book is based primarily on papers that were delivered at the Sixth Annual Ethics and Technology Conference that was held at Boston College in late June, 2003. These conferences, sponsored by a group of American Jesuit universities, date back to 1996 when the Internet's social challenges were just becoming apparent. At the 2003 conference, a joint effort organized by the Carroll School of Management and the Boston College Law School, information technology professionals, ethicists, and legal scholars from all over the world came together in order to grapple with some of the more thorny ethical problems that have great salience for the knowledge economy.

There were sessions devoted to the seemingly esoteric theories of philosophers such as John Locke and G.W.F. Hegel. These theories have shaped the debate about the moral primacy of property rights, and the writings of these thinkers can still be mined for valuable insights. Thus, included in Section II of this volume are papers that consider the relevance of Locke's philosophy as a grounding for intellectual property rights. Also included is a theoretical discussion of the problems inherent in distinguishing an idea from its expression, which relies on the ontological distinction between universals and particulars. That dichotomy is a crucial but unsettled element in modern copyright law, and the confusion is reflected in the philosophical debate over this matter that dates back to Plato.

In addition, more pragmatic issues were hotly debated at the conference. These issues included the scope of trademark rights over domain names used in cyberspace, the development and control of digital media, trespass in cyberspace, the ethical acceptability of copying software for one's friends, appropriate policies for webcasting technology, and the role of policy makers in promoting the use of open source software. Many of these topics are discussed in the papers included in Section III.

Finally, to round out the collection, this book opens with a comprehensive introduction that enunciates the fundamental issues underlying the evolution of intellectual property protection in cyberspace. This essay has been written by the two editors, Richard A. Spinello and Herman T. Tavani, and it will be an invaluable resource for every reader. It carefully considers the traditions supporting intellectual property rights along with the perspectives of those who contest those rights. Postmodernist scholarship, for example, questions concepts of authorship and originality, while some legal scholars point to the indeterminacy of traditional property theories. But Spinello and Tavani conclude that there is a case to be made for a regime of moderate intellectual

property protection that spurs creativity and innovation without disrupting the integrity of the public domain.

If this is the reader's first plunge into these complex issues he or she may find that the waters are difficult to navigate. The introduction, however, should make the task of navigation much easier. Of course, all of the questions raised in the introduction and in the succeeding chapters deserve more debate and discussion. But the insights offered by each one of these authors are sure to be of great assistance to anyone daring enough to explore these uncharted waters.

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