

# Intellectual-Property Rights and Wrongs

## [Joseph E. Stiglitz](#)



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Last October, the General Assembly of the World Intellectual Property Organization (WIPO) decided to consider what a development-oriented intellectual property regime might look like. The move was little noticed, but, in some ways, it was as important as the World Trade Organization's decision that the current round of trade negotiations be devoted to development. Both decisions acknowledge that the current rules of the international economic game reflect the interests of the advanced industrial countries – especially of their big corporations – more than the interests of the developing world.

Without intellectual property protection, incentives to engage in certain types of creative endeavors would be weakened. But there are high costs associated with intellectual property. Ideas are the most important input into research, and if intellectual property slows down the ability to use others' ideas, then scientific and technological progress will suffer.

In fact, many of the most important ideas – for example, the mathematics that underlies the modern computer or the theories behind atomic energy or lasers – are not protected by intellectual property. Academics spend considerable energy freely disseminating their research findings. I am pleased when someone uses my ideas on asymmetric information – though I do appreciate them giving me some credit. The growth of the “open source” movement on the Internet shows that not just the most basic ideas, but even products of enormous immediate commercial value can be produced without intellectual property protection.

By contrast, an intellectual property regime rewards innovators by creating a temporary monopoly power, allowing them to charge far higher prices than they could if there were competition. In the process, ideas are disseminated and used less than they would be otherwise.

The economic rationale for intellectual property is that faster innovation offsets the enormous costs of such inefficiencies. But it has become increasingly clear that excessively strong or badly formulated intellectual property rights may actually *impede* innovation – and not just by increasing the price of research.

Monopolists may have much less incentive to innovate than they would if they had to compete. Modern research has shown that the great economist Joseph Schumpeter was wrong in thinking that competition in innovation leads to a succession of firms. In fact, a monopolist, once established, may be hard to dislodge, as Microsoft has so amply demonstrated.

Indeed, once established, a monopoly can use its market power to squelch competitors, as Microsoft so amply demonstrated in the case of the Netscape Web browser. Such abuses of market power discourage innovation.

Moreover, so-called “patent thickets” – the fear that some advance will tread on pre-existing patents, of which the innovator may not even be aware – may also discourage innovation. After the pioneering work of the Wright brothers and the Curtis brothers, overlapping patent claims thwarted the development of the airplane, until the United States government finally forced a patent pool as World War I loomed. Today, many in the computer industry worry that such a patent thicket may impede software development.

The creation of any product requires many ideas, and sorting out their relative contribution to the outcome – let alone which ones are really new – can be nearly impossible.

Consider a drug based on traditional knowledge, say, of an herb well known for its medicinal properties. How important is the contribution of the American firm that isolates the active ingredient? Pharmaceutical companies argue that they should be entitled to a full patent, paying nothing to the developing country from which the traditional knowledge was taken, even though the country preserves the biodiversity without which the drug would never have come to market. Not surprisingly, developing countries see things differently.

Society has always recognized that other values may trump intellectual property. The need to prevent excessive monopoly power has led anti-trust authorities to require compulsory licensing (as the US government did with the telephone company AT&T). When America faced an anthrax threat in the wake of the September 11, 2001, terrorist attacks, officials issued a compulsory license for Cipro, the best-known antidote.

Unfortunately, the trade negotiators who framed the intellectual-property agreement of the Uruguay trade round of the early 1990’s (TRIP’s) were either unaware of all of this, or more likely, uninterested. I served on the Clinton administration’s Council of Economic Advisors at the time, and it was clear that there was more interest in pleasing the pharmaceutical and entertainment industries than in ensuring an intellectual-property regime that was good for science, let alone for developing countries.

I suspect that most of those who signed the agreement did not fully understand what they were doing. If they had, would they have willingly condemned thousands of AIDS sufferers to death because they might no longer be able to get affordable generic drugs?

Had the question been posed in this way to parliaments around the world, I believe that TRIP's would have been soundly rejected.

Intellectual property is important, but the appropriate intellectual-property regime for a developing country is different from that for an advanced industrial country. The TRIP's scheme failed to recognize this. In fact, intellectual property should never have been included in a trade agreement in the first place, at least partly because its regulation is demonstrably beyond the competency of trade negotiators.

Besides, an international organization already exists to protect intellectual property. Hopefully, in WIPO's reconsideration of intellectual property regimes, the voices of the developing world will be heard more clearly than it was in the WTO negotiations; hopefully, WIPO will succeed in outlining what a pro-developing intellectual property regime implies; and hopefully, WTO will listen: the aim of trade liberalization is to boost development, not hinder it.