Title: The Big Steal: Ideology, Interest, and the Undoing of Intellectual Property

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Author of the summary: Name, title and institution: Cuka, Patrick, M.Sc., Economic Consultant at 4ip Council

SUMMARY			
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Chapters in the Book:

Conclusion (p.348-350)

Summary

Conclusion

The critical question in IP policy is whether private interests align with the public interest in fostering innovation. The balance of power between innovators and implementers shapes the strength of IP protections, potentially causing inefficiency. The U.S. has experienced a shift in IP policy since the 1980s, marked by major legal changes. New technologies like biotech and digital media challenged IP enforcement, prompting legal responses to support innovation. Courts initially favored IP rights, aligning with innovators' preferences. For example, the 1982 Chakrabarty decision extended patent protection to biotech, spurring sector growth through licensing. Similarly, the Bayh-Dole Act and the creation of the Federal Circuit empowered IP owners.

In content markets, courts strengthened copyright in response to file-sharing, notably in the 1998 Napster and 2005 Grokster decisions, though these were widely criticized for favoring large media companies. Scholars and industry experts called for broader fair use and more lenient DMCA safe harbors. This critique led to limits on injunctive relief after the 2006 eBay decision. Policymakers, responding to pressure, began pushing back on strong IP rights, especially in digital content and pharma.

Today, a weakened IP infrastructure hinders innovators unable to bring products to market independently. In wireless communications, patent enforcement barriers harm small innovators. In biopharma, weaker protections jeopardize incentives for costly drug development. Mass infringement in content markets, compounded by generative AI, further threatens viability. Ultimately, the devaluation of IP protections benefits digital intermediaries over innovators, risking long-term harm to innovation and social welfare.