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

Author(s) + Article info: Barnett, Jonathan M., *The Big Steal: Ideology, Interest, and the Undoing of Intellectual Property* (New York, 2024; Oxford Academic, 24 Oct. 2024)

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

SUMMARY			
Document Title	Barnett, Jonathan M., *The Big Steal: Ideology, Interest, and the Undoing of Intellectual Property* (New York, 2024; Oxford Academic, 24 Oct. 2024)		
Author	Patrick Cuka	**Date**	21.03.2025

Abstract:

This chapter explains that intellectual property (IP) rights will remain essential in the digital economy, despite some claims that new technologies may eliminate the need for them. While digital intermediaries initially resisted strong IP enforcement, music and short-form video markets demonstrate a shift towards property-based structures. Firms such as Marvel leveraged IP rights to attract investment, showcasing IP's importance for creative industries. The "IP deficit" concept highlights the gap between available and optimal IP protections needed for innovation. The decline of the music industry post-Napster, followed by its recovery through licensed streaming, illustrates how property rights enable sustainable revenue streams. Similarly, YouTube's Content ID system provides limited compensation, underscoring the necessity of stronger copyright enforcement. Weak IP protections distort market incentives, forcing platforms to offer lower compensation for creative work. Without strong copyright protection, creative industries struggle to secure funding and sustain innovation. The digital content market's evolution suggests that IP rights remain a fundamental pillar for economic and creative growth.

Chapters in the Book:

Part 5- Remaking IP Rights
Chapter 16- The Inevitability of Property Rights (p.327-337)

Summary

16. The Inevitability of Property Rights

Some argue that (strong) intellectual property rights are no longer needed due to digital technologies replicating and distributing content. This view has been supported by scholars, policy advocates, and tech businesses, especially regarding copyright enforcement against digital intermediaries. In the following, this view is challenged by evolving business models in digital content markets, particularly in music and short-form video content. Specifically, leading intermediaries in these markets have adopted some form of property rights to ensure remuneration for content creators. Property rights, whether formal or informal, are essential to maintaining the flow of high-value creative output in the digital economy. Contrary to the claims of academic commentators, property rights are crucial for a well-functioning creative economy.

16.1. The Persistent IP Deficit

Property rights are typically viewed as formal legal entitlements but can also be understood functionally as mechanisms to restrict unauthorized usage of an asset. Hence, even in a jurisdiction without a formal property registry, individuals can assert de facto property rights, using security measures or business relationships to regulate usage. Ultimately, the strength of a functional property right depends on the tools available to block unauthorised usage and the investments made to implement these tools. From an economic perspective, the effective level of property rights protection combines both formal legal rights and extra-legal options. In other words, property rights are seen as market-developed mechanisms to enforce "rights" against third-party users. At this point "IP deficit" emerges as an important term. It refers to the gap between the available level of IP protection and the socially efficient level needed to incentivize innovation in specific markets. For example, a software market with insufficient formal copyright protection might not need stronger legal enforcement, if the industry has adopted the "software as a service" (SaaS) model. Specifically, the SaaS model helps prevent piracy by denying access if payments are not made. Therefore, it addresses challenges in enforcing formal property rights in the software market. Typically, SaaS distribution offers business advantages like service updates or custom pricing, while addressing limitations in copyright enforcement at the same time.

It is important to note, however, that the SaaS model only partially replicates copyright protection because it lacks the "trade-ability" of formal property rights. This is critical, because trade-ability allows holders to separate control from usage, enabling licensing and value-creating transactions that drive innovation. Without trade-ability, markets would be limited in size, and business partnerships would be difficult. Thus, according to economic principles, the combination of formal IP rights and contractual instruments maximizes the commercial value of innovation assets.

This point is made clear when looking at the Marvel franchise. In 1996, Marvel had entered corporate reorganization in the wake of the decline of its then-principal market, print comic books. As part of its restructuring, Marvel decided to shift strategy and attempt to cultivate the commercial value of its comic book characters by entering the motion picture market. Initially, Marvel licensed its characters to studios. Later it used its copyrights as collateral for a $525 million loan to finance its own films. Crucially, the ability to enforce copyright protections reassured investors and allowed Marvel to scale its business. In 2009, Marvel was acquired by Disney. In this transaction, digital security barriers in the case of a streaming service functioned like property rights by enabling pricing mechanisms for creative goods. The continued flow of high-value, high-cost content into that market in turn relies on a secure copyright apparatus to block unauthorized copying and distribution. Without strong IP protections, companies like Marvel would struggle to raise capital, limiting the potential of their creative assets and harming both creators and consumers.

16.2. The Inevitability of Property Rights

Unlike tangible goods, property rights in intangible markets are complex since firms can use alternative mechanisms to control access and capture value. However, formal IP rights remain essential even when firms have extralegal options for protecting innovation. Policymakers cannot determine the most efficient mix of IP rights, contracts, and technology to maximize value extraction. A strong baseline of formal IP protections allows markets to experiment and find the best combination of legal and informal mechanisms. Without IP rights, innovators risk adopting suboptimal business models that fail to capture an innovation's full value.

Restoring IP protections enables markets to refine value extraction strategies through trial and error. The evolution of digital music and short-form video markets illustrates this principle.

16.2.1. The Digital Music Market

Following the launch of the Napster[1] platform in 1998, copyright protections declined drastically in strength given the inability to enforce copyright against individual users. This resulted in a sharp decline in revenues from recorded music. Even after Napster shutdown, new file-sharing platforms emerged, making it difficult to deter copyright infringement. Some argue that artists adapted by relying on live performances for income, suggesting copyright is unnecessary for musical production. That conclusion is premature for two reasons. First, a live performance-based model fails to capture additional value from IP-protected sound recordings distributed via radio, streaming, or licensing. Without a strong copyright system, financing and marketing opportunities based on recorded music rights are significantly reduced. Second, unlike digital music distribution, live performances are limited by venue capacity. Thus, the number of artists who can earn meaningful income are restricted.

Consistent with this expectation, research shows that post-Napster concert revenues mainly benefited older artists who built their brands under strong copyright protections. Further empirical studies confirm that live-performance earnings are highly concentrated among a few superstar artists and limit financial opportunities for emerging musicians. In retrospect, the music industry's recovery after Napster was not solely due to live performances but also from licensed streaming services providing revenue to copyright owners. Streaming services, such as Apple's iTunes in 2003, used technology, contracts, and copyright to maintain exclusivity and generate revenue. Later came platforms like Spotify, Amazon Music, and Apple Music, which restored funding for music production through secure copyright-based licensing. The impact of licensed streaming services becomes clear when looking at U.S. sound recording revenues. They rebounded from $6.7 billion in 2014 to $14.9 billion in 2021. In the end, these funding sources that have supported music streaming platforms resulted in a better user experience with greater convenience and reliability. To be clear, piracy still exists through unlicensed ad-supported streaming and stream-ripping services. But it has declined compared to the post-Napster years. Without copyright enforcement, the market would favour ad-based platforms with lower quality, limited artist remuneration, and reduced incentives for music production.

16.2.2. Short-Form Digital Video Market

The evolution of short-form video markets on YouTube, Instagram, and TikTok underlines the limitations of a property-free environment for sustaining high-value content. Somewhat ironically, YouTube, the defendant in the *Viacom v. YouTube*[2] litigation, illustrates this issue clearly. (*Viacom v. YouTube* was a copyright infringement lawsuit in which Viacom accused YouTube of knowingly allowing and profiting from unauthorized uploads of its copyrighted content.) To address the challenge, YouTube has introduced payment mechanisms for content creators. These payments help mitigate distortions caused by weak IP protections but do not fully replace a robust copyright system. Without secure copyright enforcement, asset values remain unstable due to expropriation risks. A well-functioning market requires strong IP rights to ensure sustainable content creation and monetization.

16.2.3. Content ID

In 2007, YouTube developed its Content ID program, a year after being acquired by Google. Content ID is an automated detection service that identifies infringing material owned by entities that are eligible to enroll in the service. It allows copyright owners to either request takedowns or monetize infringing content by sharing ad revenue from detected videos. According to the platform, most major content owners, including record labels and movie studios, opt for revenue-sharing. However, this system does not fully restore strong copyright protections. As observed by the U.S. Copyright Office, YouTube's payments to content owners are significantly lower than rates on licensed streaming platforms. As of 2024, YouTube pays artists an average of $0.00087 per view, compared to $0.003-$0.005 on Spotify. Thus in 2023, an artist needed 1,456 YouTube

[1] See Chapter 3 and 5 for further information.
[2] See Chapter 3 and 5 for further information.

views to earn one dollar, compared to 229 Spotify streams. Given these compensation levels, it is unsurprising to learn that the total income earned by the overwhelming majority of creators on YouTube is reportedly insignificant.

Critically, YouTube's low Content ID payments are partly a result of its legal protection under the DMCA[3] safe harbour, shielding it from monetary damages. Also, because content owners cannot effectively deny access, YouTube can offer only minimal compensation for unauthorized use. This artificially low compensation distorts market value, forcing licensed platforms like Spotify and Apple Music to adjust fees downward to compete. Hence, even when a copyright owner receives some compensation for the unauthorized use of their content, the price does not reflect market value. Ultimately, this also distorts the royalties paid to artists by platforms like Spotify, Apple Music, and Amazon Music. The reason is the presence of unlicensed content because these digital intermediaries compete with YouTube's zero-price alternatives. In summary, while Content ID addresses some issues of weak copyright enforcement, it does not fully restore the market value of creative content.

16.2.4. Original Content Initiatives

The business history of YouTube highlights the challenges of supporting high-value content production through ad-based models and limited payments via mechanisms like Content ID. Several times, efforts have been made to support and promote original content production for YouTube through direct payment to short-form content producers. For example, YouTube attempted to build a subscription-based streaming service with YouTube Originals, but the initiative failed to sustain content production. This program (and similar programs on platforms like Instagram and TikTok) provided content creators with a share of ad revenue to incentivize content creation. YouTube Music is a subscription music-streaming service that competes with platforms like Spotify and is fully licensed by content owners. Unlike the free YouTube music service, it offers users features such as ad-free viewing or the ability to build playlists. These initiatives, all of which involve payments to content creators, demonstrate YouTube's recognition that content creators must receive meaningful remuneration to continue producing original content. Yet, despite YouTube's recognition of this reality, many academics and policymakers continue to question the necessity of robust copyright or property rights in digital content markets.

16.3. Closing Thoughts

The reversion of music and video markets to traditional funding models shows the limitations of ad-based giveaway models. Unsurprisingly, digital intermediaries find content websites lack high-value content without financial incentives. Many content markets recover these revenue streams through property rights. Licensed music and video streaming services in highlight the importance of property-rights infrastructure in supporting content production. This includes legal, technological, and contractual devices that regulate access to content. The same argument can be made for licensed platforms in electronic books, digital images, and other creative media. Copyright is essential for creating property rights that incentivize content production and compensate artists.

---

[3] See Chapter 3, 5, 6, 12 and 17 for further information.