

Title: [The Big Steal: Ideology, Interest, and the Undoing of Intellectual Property](#)

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SUMMARY			
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Abstract

This chapter examines the evolving landscape of intellectual property (IP) rights, highlighting the influence of large firms in shaping weaker protections. It explores how technology aggregators and integrated companies benefit from reduced IP enforcement which, in turn, disadvantages stand-alone innovators. Historical examples and recent policy developments demonstrate a shift in power dynamics in technology and content markets. While biopharmaceuticals is the only market where it is widely accepted that patents foster innovation, large tech firms lobby against patents to minimize costs in their industry. This threatens innovation, favoring established platforms over emerging creators. Ultimately, weakened IP protections may undermine the very innovation ecosystem they claim to support.

Chapters in the Book:

Part I – Concepts and Background

Chapter 1 – Making and Unmaking Intellectual Property Rights (p. 13-28)

Summary

1. Making and Unmaking IPR

This chapter explores how IP law has changed rapidly, favoring firms with specific business models. It provides a framework to analyze legal changes influenced by private interests. Using economic theory, the framework is developed in two steps: first, a theory of legal change where private groups invest in influencing policy, then an application of this theory to the ongoing evolution of IP law.

1.1A Theory of Legal Change

Generally speaking, legal changes occur when invested parties heavily influence policymakers and changes align with policymakers' perceptions of their constituencies' dominant preference. For now, policymakers determine this preference through advocacy, financial contributions, and public support. It is assumed that they seek political goodwill by following dominant preferences, even if they have differing personal ideological views which can be overridden by strong public opinion. The following examples show the main take-aways: reviving mandatory military service for 18-year-old males is unlikely to succeed, even with strong lobbying, because it conflicts with dominant policy preferences. Conversely, a tax cut for middle-income households has a reasonable chance, as it benefits a large constituency and aligns with policymakers' perceived preferences.

1.2 The Consensus: The Imbalance of Power in IP Politics

One might also consider scenarios where there is no clearly dominant policy preference for a policymaker. In such circumstances, policymakers are impacted by smaller, organized groups with strong preferences. These groups shape legal changes by investing resources effectively. Larger, dispersed constituencies struggle to compete due to weak preferences or problems organizing collective action. In this scenario, policymakers tend to favor smaller, well-funded groups, especially when lacking ideological biases.

This has an application to the real world, where IP policy is often seen as dominated by "Big Business", demonstrating the disproportionate exercise of influence over legal outcomes. Large firms favour strong IP rights to maintain pricing power and block competition, while individual IP users prefer weaker protections to lower costs but lack political impact. Due to this imbalance, policymakers tend to support excessive IP protections, benefiting corporations beyond what is needed to incentivize innovation.

1.3 Revisiting the Imbalance of Power in IP Politics

Yet, when looking at real-world innovation markets, it is clear that the assumption that strong IP rights mainly serve large firms is false. In reality, political influence towards weaker protections is often observed. Firms that aggregate content and technology, rather than create them, benefit from reduced IP protections. Similarly, vertically integrated firms with ecosystems (for example Apple selling iPhones and their Operating Systems) may oppose IP protection to limit litigation and put stand-alone innovators at a disadvantage. This preference for weak IP protection exhibited by large firms in the digital economy casts doubt on the view that strong IP rights necessarily shield incumbents from competitors.

1.3.1 Technology Markets: Large Firms Usually Like Weak Patents

In technology markets for example, large firms often lobby against strong patent protections (except in pharmaceuticals). Examples of firms opposing the extent of patents to new technologies are 19th-century railroads or when IBM resisted software IP protections in the 1960s and 1970s. More modern examples include patent reforms, such as the 2011 America Invents Act and Supreme Court rulings on IP since 2006. Here too, we see weakened patent protections often benefiting large technology and finance firms. These companies prefer weaker patents to reduce costs and litigation risks. Their business models prioritize acquiring technology rather than relying on strong IP protections. By contrast, the smaller population of technology firms that tend to prefer stronger IP rights, typically invest heavily in R&D and vertical integration.

The biopharmaceutical industry is an exception to the trend of integrated firms favoring weak IP protections. In this industry, strong patents are essential for monetizing high-cost R&D investments. Developing a new drug can be costly, while imitation costs remain low. This highlights the importance of strong IP protection, even for large incumbents. Patents are especially vital for biotech startups, which rely on

venture capital and partnerships with major pharmaceutical firms (such as in BioNTech's collaboration with Pfizer to develop a COVID-19 vaccine). Without patents, such startups would struggle to secure funding, share research, or attract top scientific talent.

1.3.2 Content Markets: A Shift in the Balance of Power

Looking at content producers, a long history of lobbying for stronger copyright protections to prevent unauthorized copying (similar to pharmaceutical firms protecting against imitation) is observed. In the U.S., copyright laws expanded in response to new technologies including photographs in 1865, musical performances in 1897, mechanical reproductions in 1909, and motion pictures in 1912. Federal copyright for sound recordings emerged in 1972. Strong IP protections align with entertainment industry business models, where content is directly delivered to consumers or licensed to distributors. Unlike technological assets, content is easily copied, increasing reliance on legal protections. One reason why the content industry has effectively lobbied for copyright extensions is due to the small number of large firms that internalize political influence gains. The 1998 copyright term extension, often called the "Mickey Mouse Term Extension Act," exemplifies this influence, though it also aligned the U.S. law with foreign standards.

Consumers, a large and dispersed group, generally prefer weaker copyright protections but lack the organization to affect policy. Scholars argue this imbalance results in excessively strong copyright laws beyond the socially optimal level. In the digital era, many still view copyright expansions as evidence of "Big Media's" impact, despite the growing dominance of "Big Tech" in content distribution. Copyright is often framed as a tolerated necessity rather than an efficient market tool, with efforts to strengthen it presumed to protect legacy media power rather than promote creativity.

However, the view that copyright laws favour content producers has become outdated. By the 2000s, major search engines and digital-content aggregators had gained significant influence over copyright policymaking, diminishing the content industry's impact. This shift from "Content" to "Tech" was the result of two key factors. First, individual users undermined IP protections by freely copying digital content with minimal enforcement risk. This widespread infringement reduced the effective value of IP protections, forcing content owners to compete with pirated content. Second, digital aggregators rely on content as an input to attract users and generate ad revenue but do not primarily invest in content creation. As net content users, these firms benefit from weaker IP protections, aligning their policy advocacy against stronger copyright enforcement. They have significantly influenced copyright policy by pursuing two key strategies: negotiating favourable licenses or bypassing licensing altogether.

By undermining content exclusivity and challenging IP protections through advocacy and litigation, aggregators diminish the credibility of copyright enforcement, reducing content-acquisition costs while maximizing advertising revenues. Their influence is bolstered by their financial resources and concentrated market power, enabling them to lobby effectively for weaker copyright protections. Additionally, their policy goals align with public preferences for free content. This makes it politically advantageous for lawmakers to favour reduced IP protections, further sidelining traditional content owners in policy debates. Examples, such as the defeat of the Stop Online Piracy Act in early 2012 highlight the shift in political influence over IP policy. Despite strong lobbying from the entertainment industry, technology firms, advocacy groups, and grassroots protests led to the bills' failure. This reflected a broader trend where content aggregators successfully weakened copyright protections. Scholars, policymakers, and advocacy organizations reinforced this shift, solidifying a consensus against strict enforcement in digital-content markets.

1.3.3 Technology Markets (Again): The Imbalance of Power Re-Emerges

Recent decades have shown a trend amongst legislatures for strengthening IP protections again. The Bayh-Dole Act (1980), the establishment of the Federal Circuit (1982), and subsequent case law strengthened U.S. patent protection, reversing decades of weak enforcement. This shift supported innovation across industries, from pharmaceutical giants with end-to-end pipelines, to biotech startups and university tech-transfer divisions. However, many large information technology (IT) and financial firms have since lobbied to weaken patent protections, aligning with their business models. Companies like Sony, Intel, and Alphabet, which monetize R&D through integrated production, often see strong IP protections as counterproductive, as they can enable new competitors to enter the market. Large firms, or coalitions of firms, often find it rational to invest in reshaping market regulations to their advantage. In line with this, major IT firms have worked to

weaken patent protections through lobbying, advocacy, and litigation. These firms typically possess the financial resources and political influence necessary to drive policy changes. While IT firms pushing for weaker patents are relatively few in number, their significant lobbying power outweighs the smaller, R&D-focused entities reliant on strong patent protections.

Unlike pharmaceutical patents with clear public impact, general patent policy lacks broad voter salience, allowing policymakers to align with well-organized, resource-rich tech firms advocating weaker protections. The biopharmaceutical industry, while financially strong and organized enough to push for robust patent protections, faces greater political challenges than large IT firms. Despite their resources, they compete against well-funded IT giants favouring weaker IP laws. More critically, strong drug patents often conflict with majoritarian public preferences, as they are associated with high medication cost. This is an issue that resonates with voters, insurers, hospitals, and government purchasers. Unless a policymaker has a personal or regional stake in pharmaceutical innovation, they have little incentive to support strong patent protections at the cost of political goodwill.

In conclusion, the legal devaluation of IP assets tends to favor platform-based firms that specialize in the assembly, organization, and dissemination of existing technology and content assets. Meanwhile, innovation-intensive firms and individuals that specialize in generating new technology and content assets are in a disadvantage. The knowledge-based ecosystem cannot thrive without the innovative stakeholders. Ultimately, “free stuff” may turn out not to be very free at all.