



# THE FREE STATE FOUNDATION

A Free Market Think Tank for Maryland.....Because Ideas Matter

## *Perspectives from FSF Scholars*

*April 24, 2017*

*Vol. 12, No. 14*

### **Protect Intellectual Property Rights on World IP Day – and Every Day**

**by**

**Randolph May\* and Seth Cooper\*\***

[The Hill](#)

April 23, 2017

World Intellectual Property Day is on April 26. So, it's a timely occasion for recognizing the vital role of patents and copyrights in encouraging creativity and innovation in the Digital Age.

As World IP Day approaches, American policymakers should keep four basic considerations foremost in mind: First, the obligation to protect Americans' patent rights and copyrights is explicitly secured by the U.S. Constitution. Second, intellectual property rights are a tremendous source of value in our nation's economy. And third, new international agreements are needed to strengthen protections for Americans' IP rights in order to curtail losses from piracy. And Congress needs to reform and modernize the Copyright Office because its proper functioning is so crucial to securing those rights.

The U.S. Constitution's Intellectual Property Clause provides Congress with the power "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The IP Clause incentivizes creative artists and inventors to labor and invest capital to produce original works and inventions.

---

**The Free State Foundation**  
**P.O. Box 60680, Potomac, MD 20859**  
**[info@freestatefoundation.org](mailto:info@freestatefoundation.org)**  
**[www.freestatefoundation.org](http://www.freestatefoundation.org)**

As we demonstrated in our book, *The Constitutional Foundations of Intellectual Property*, the founding fathers, along with later key figures such as Noah Webster, Daniel Webster, Justice Joseph Story, Chancellor James Kent, and Abraham Lincoln, regarded patent rights and copyrights as unique property rights that deserve protections similar to land or other physical property. Copyright and patent law protections ensure that creative artists and inventors can reap the “fruits of their labor” by making their works and discoveries commercially available to the public.

When President George Washington signed the Copyright and Patent Acts of 1790, IP protections were largely sought by inventors of early industrial technologies and by print book authors. But, now, over two hundred years later, with the emergence of digital computing and Internet connectivity, patent and copyright protections have expanded to new technology platforms and media formats.

Today, for example, copyright protects movies streamed from the Internet, downloaded music recordings, and video games. According to a December 2016 report by the International Intellectual Property Rights Alliance, market participants whose main purpose is to generate copyrighted content employed more than 5.5 million American workers and added over \$1.2 trillion in value to the American economy in 2015. IP is thus a critical source of value in the American economy, encouraging innovation, providing jobs, and facilitating the offering of new goods and services.

Unfortunately, intellectual property is also a lucrative target for piracy, infringement, and other unlawful activities. According to the IP Commission’s 2017 report, the American economy suffers annual losses between \$225 billion and \$600 billion from counterfeit goods, pirated software, and theft of trade secrets. The IP Commission found that the value of pirated software exceeded \$52 billion worldwide in 2015, costing the American economy some \$18 billion in lost revenue. Overall, the IP Commission concluded that the American economy suffered more than \$1.2 trillion in damages from economic espionage and forms of IP piracy since 2013.

Also commonplace are unauthorized postings of copyrighted motion pictures and music recordings by popular Internet websites like YouTube that rely on user-uploaded content. Ongoing unauthorized postings by repeat infringers reduce royalties that rightfully belong to copyright holders.

The Trump administration should negotiate stronger protections for American IP rights holders globally. Although President Trump withdrew the U.S. from the Trans-Pacific Partnership agreement with its pro-IP protections, it is highly unlikely that IP was a factor in that decision. Going forward, the U.S. should seek new bilateral or multilateral agreements aimed at bolstering piracy interdiction and other IP enforcement efforts. Such agreements would benefit American IP rights holders abroad. Achieving better protections for IP rights internationally through trade agreements will result in mutual gains for trading nations and promote global economic growth.

Congress should update the Digital Millennium Copyright Act’s “notice and takedown” provision for removing copyright-infringing content from Internet websites. The Act was adopted in 1998, before user-upload online sites became ubiquitous. The notice and takedown system is too cumbersome and slow. There should be more streamlined ways for copyright

holders to thwart infringers that repeatedly upload the same copyrighted content to the same websites.

In addition, Congress should pass pending legislation to restructure the U.S. Copyright Office and upgrade its technological capabilities. Granting the Copyright Office a significant measure of autonomy from the Library of Congress would enable the Office to better focus on its core mission of securing and administering IP rights. An autonomous Copyright Office could establish modernized registration and recordation databases to reduce public search costs and facilitate sales and licenses of copyrighted content. This would promote a better-functioning market in intellectual property.

On this World IP Day, American policymakers should recommit to protecting and securing IP rights in the digital age. They should rest assured that such actions are solidly backed by the Constitution.

\* Randolph J. May is President of the Free State Foundation, an independent, nonpartisan free market-oriented think tank located in Rockville, Maryland. *Protect Intellectual Property Rights on World IP Day – and Every Day* was published in *The Hill* on April 23, 2017.

\*\* Seth L. Cooper is a Senior Fellow of the Free State Foundation.