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**Why Intellectual Property Rights Matter:  
The Founders Believed Ownership of One's Labor Is a Natural Right**

by

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The digital revolution has spawned new platforms for authors, artists, inventors and other creators. Global digital distribution of works and products grounded in intellectual property (IP) rights now occurs virtually instantaneously and more economically than ever before. At the same time, the Internet age has prompted a perception that intellectual property online is less deserving of protection than intellectual property in tangible goods. This skewed perception harms the American economy and undermines respect for rights protected by our Constitution.

For all its enormous social and economic benefits to individuals and society, the Internet has its dark sides. One dark side is the theft of intellectual property. Economic losses from IP theft — principally theft of property subject to copyright — run into billions of dollars per year.

Criminals perpetrate much piracy of intellectual property online. Given a chance, such crooks will steal property no matter what the form. Nevertheless, a substantial amount of online piracy is attributable to the contemporary "downgrading" of IP rights by otherwise law-abiding people. With so much information so readily available on the Internet and so easily copied,

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distributed, recopied and redistributed, ad infinitum, many suppose online content is there for the taking. As the oft-repeated mantra has it, "information wants to be free."

Digital-age dilettantes find that mantra appealing. For them, it is but a short step to accepting the notion that theft of intellectual property online is not theft at all. Unlike theft of tangible property, say a book or boxed set of CDs containing Frank Sinatra's greatest hits, online theft of those same works in digital form is no big deal.

But it is a big deal. The view that intellectual property rights are less deserving of online protection than other rights secured by the Constitution denigrates IP rights. It also denigrates basic principles of American constitutionalism.

Article I, Section 8, Clause 8 of the Constitution — the Intellectual Property Clause — grants Congress 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 makes copyrights and patent rights unique areas in which the federal government is expressly charged with protecting private property rights.

The first Congress took up the Constitution's charge to protect intellectual property rights by adopting the first copyright and patent acts, which President George Washington signed into law. Because so many of members of the first Congress served at the Constitutional Convention of 1787 or at state ratifying conventions, it is often called the "Constitutional Congress." The Constitutional Congress' inclusion of IP rights protections in its historic legislative agenda reinforces the Founders' regard for intellectual property.

This should not surprise anyone familiar with our nation's constitutional foundations. The thinking of the Constitution's framers bore the imprint of classical liberal philosophy. And it is an axiom of classic liberal philosophy that each person has a natural right to the fruits of his or her own labor. "Property" ownership is rooted in a person's labor. And a central aim of government is to protect what belongs to each person.

James Madison's 1792 National Gazette essay, "On Property," is instructive. The "Father of the Constitution" drew directly from influential 17th century philosopher John Locke. Madison offered a broad definition of property, which "in its larger and juster meaning embraces every thing to which a man may attach a value and have a right." As Madison explained, "a man has property in his opinions and the free communication of them," and that which his own labor, "by the sweat of his brow," has created. And following Locke, Madison concluded, "government is instituted to protect property of every sort."

Madison's "On Property" essay explains why the Founders' concern with protecting property rights was not limited to tangible property. By including the IP Clause in the Constitution, the Founders applied to intellectual property the idea that a person has a natural right to enjoy the fruits of his or her labor. Thus, the Constitution affirmatively secures the property rights of "Authors and Inventors" in their works.

The "information wants to be free" mantra may have superficial appeal. It certainly does to those who prefer not to pay for copyrighted or patented works or inventions. But theft of intellectual property — online or otherwise — constitutes theft just as much as entering another person's home and stealing a handful of books.

Downgrading intellectual property means disregarding a fundamental right. Our Founders considered copyrights and patents important enough to include in the Constitution. Recalling the Founders' thinking should lead us to upgrade our respect for IP rights and our commitment to protecting them.

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