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Protecting Global IP Rights Is an Economic Imperative

by

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For America's digital age innovators to continue thriving, it is important to know which nations have strong protections for intellectual property rights (IP) and which ones need to do more. Securing protection for American intellectual property rights on a global basis is an economic imperative. It also fits with America's constitutional order of protecting, as a matter of natural right, the fruits of labor that results in new creative works and inventions.

The U.S. Chamber of Commerce's annual release of its International IP Index is a valuable tool in assessing the strengths and weaknesses of the IP environment in 38 different countries. This year's volume, titled "Infinite Possibilities," is set to be released on February 10.

For America's entrepreneurs, decisions concerning where to invest and how much often hinge on the strength of foreign nations' commitment to protect valuable intellectual property rights. One report estimated that the copyright industries added \$1.1 trillion in value to the U.S. economy and employed nearly 5.5 million workers in the U.S. in 2014. But according to the 2013 report of the "Commission on the Theft of American International Property," losses to the American economy from piracy likely exceed \$300 billion annually.

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Foreign nations that don't protect IP rights should face American diplomatic pressure. And treaties and international trade agreements, such as the recently-negotiated Trans-Pacific Partnership, should contain meaningful IP protections.

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 advances the public good by rewarding -and thus encouraging - the intellectual labors of creators and inventors. As we explain in our recent book, *The Constitutional Foundations of Intellectual Property*, America's Founders regarded copyright and patent rights as property rights justly deserving protection on par with physical property.

The IP Clause permits protection of intellectual property of foreigners as a means of securing Americans' IP rights abroad. Treaty-making with foreign nations is another constitutional means for securing international IP protections for Americans. By the late 1830s, rapidly industrializing America recognized the expediency, if not the justice, of respecting the intellectual property rights of foreign inventors. The Patent Acts of 1836 and 1839 allowed foreign nationals to obtain patent protections in America. These laws also permitted American patents for inventions first patented in other nations.

But for most of the 19th Century, American authors lacked international copyright protections. Publishers in Great Britain and elsewhere reprinted works by authors such as Washington Irving and James Fenimore Cooper without obtaining consent or paying royalties. The absence of international IP protections inflicted severe financial losses on American authors and undermined the incentive to undertake the labor necessary to produce literary works.

Not surprisingly, consistent with our Founders' understanding, the primary argument advanced for securing international copyright protection was grounded in the natural right of authors to enjoy the fruits of their labors. For example, in 1837 Senator Henry Clay said: "That authors and inventors have, according the practice among civilized nations, a property in the respective products of their genius is incontestable; and that this property should be protected as effectually as any other property is, by law, follows as a legitimate consequence." And in advocating for international copyright protection in 1886, Henry Wadsworth Longfellow declared:

One could live a great deal cheaper, undoubtedly, if he could supply himself from other people's labor or cost. But at the same time-well, it was not called honest when I was young, and that is all I can say... and if I were asked what book is better than a cheap book, I should answer that there is one book better than a cheap book, and that is a book honestly come by.

Finally, the International Copyright Act of 1891 established that American authors and creative artists could obtain copyright protections from foreign nations similar to those enjoyed at home. The 1891 statute laid the groundwork for future American cooperation in securing copyright internationally. The United States is now a signatory to numerous treaties and trade agreements that are intended to protect IP. This includes, for example, the Trans-Pacific Partnership Agreement, soon to be considered for ratification by the Senate.

How American intellectual property rights may best be secured internationally involves practical judgments by U.S. policymakers. Such judgments, in significant part, must turn on each foreign nation's track record with regard to protecting IP rights. The newest edition of the Chamber of Commerce's soon-to-be released International IP Index will be a useful tool in assessing those records.

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