

A Tale of Two Centuries: Is 19th Century America a Precedent for IPR?

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The story of Charles Dickens, who routinely saw his work pirated by American printers in the 19th century, has become an unlikely parable justifying weak IP protection in the cause of development. America did not respect IP in the 19th century, it is argued, and this helped its economy to grow; today's developing countries should copy an earlier America. The notion that lax protections for intellectual property among developing nations today parallels American attitudes towards copyright in the 19th century is an appealing historical fiction. How ironic, we can say to ourselves, that America argued in the 19th century that it was a young country and shouldn't pay royalties, and now the developing economies are saying the same thing to America.

Ironic and appealing, yes, but also wrong. The argument ignores fundamental changes in how economies produce wealth, conflates copyrights and patents, and ignores 19th century American contributions to the global stock of IP. Weak copyright laws or weak IP protections do not explain American growth in the 19th century. Understanding why this story is wrong can help policymakers today identify measures that will speed growth and development in a global information economy.

First, technology transfer does not explain America's rapid growth. America was itself from the start an innovative economy and contributed to the general pool of knowledge. Nineteenth century America was a net contributor to global innovation. Foreign producers did not hesitate to copy American designs or to take the national biogenetic patrimony. Eli Whitney patented the cotton gin in 1798, but never received adequate compensations from either Americans or foreigners, leading one ask if the valid question for IP is whether the U.S. would have grown faster in the 19th century if stronger IP protections had been available. Some 19th century Americans apparently believed so, as they spent much of the century extending and refining the national IP system.

There was no internationally accepted regime for IP protection for much of the 19th century. Now there is one. Since Dickens's complaints about the U.S., there has been a long effort to create rules for intellectual property, to establish the rule of law, and to create a new international norm as to how states should behave in regard to IP. This system was developed not as part of some century-old plot to exploit the poor, but in response to the needs of growing economies and to encourage innovation. The general adoption of the most recent of these agreements, TRIPS, was one of the prerequisites to the transition to a knowledge economy.

IP loss now goes far beyond works of fiction and herein lies the risk to developing economies and to global innovation. The IP being pirated is usually not the product of a solitary genius laboring late into the night with quill pen in hand, but the outcome of millions of dollars of investment in research and product development. Dickens did not stop writing because he did not get the full return on his effort, but the motives are different for companies and countries today. As a result, one likely outcome of weak IP protection is a decline in the rate at which new ideas (e.g. research and innovation) are produced and made public.

IP is now a capital good – albeit intangible – in the sense that it is a good that is used to produce other goods. In the 19th century, the stock of capital goods was largely comprised of physical items – steam engines, machine tools, blast furnaces. If the argument that developing nations are just doing what America did in the 19th century is to hold, we should look for examples of Americans going to Europe and removing, without permission or compensation, these physical goods. This did not occur. In the 19th century, the laws for the treatment of physical goods (or real property) were well developed, but the laws for intangible goods (or intellectual property) were weak.

We are in a period of economic transition to a very different economic and political environment. Nineteenth century economies generated wealth through agriculture and manufacturing. Trade made up a much smaller share of national income, limiting the loss from weak international IP protections. Twenty-first century economies increasingly generate wealth through trade and through the creation of knowledge and ideas. Constant innovation is crucial for economic growth and development. Creating that innovation requires a greater investment than in the past. This investment is a gamble. A researcher, entrepreneur, or company will spend millions of dollars to turn an idea into a product that it can take to market. Many efforts will fail. The investment is, in essence, a bet that the heavy expenditure at the beginning of the process will produce great returns later on.

One of the easiest ways to undermine innovation is to allow others to take new ideas or products without paying for them. The savings to the taker are significant, but the cost to the global economy is large. A researcher, entrepreneur, or company will be less likely to take the risk entailed by investment in innovation if they decide the likelihood of later compensation for this risky investment is diminished. This is not an all-or-nothing effect, but rather a disincentive for innovators that will lead them to make fewer or smaller investments in the creation of new goods and services, particularly in sectors where the capital costs of innovation are high.¹ Over time, this disincentive will grow larger for some sectors, such as the high tech sector, as the size of an investment needed for innovation continues to increase. People will make fewer ‘bets’ on innovation if the odds of winning are decreased and as the size of the required bet grows. The overall effect is will be to slow the rate innovation globally.

This is not a popular argument among those who dislike markets, globalization and the changes they bring. It is more appealing to imagine some open, communal enterprise for innovation, guided by the sentiment expressed by another 19th century author, ‘from each according to his ability, to each according to his need,’ where the norms of market behavior are suspended. There are some examples of such communal enterprises that have produced innovations, but these innovations are concentrated in only a few sectors and account for only a small fraction of total innovation. A strategy for accelerating economic development and growth would emphasize incentives for creating new IP, and IP systems that give equal weight to communal and market incentives or that emphasize a communal approach will decrease innovation.

¹ Link to R&D Intensity Chart