

**guardian.co.uk**

"Intellectual property" is a silly euphemism

---

**Cory Doctorow**

guardian.co.uk, Thursday 21 February 2008 16.18 GMT

---

**A** [larger](#) | [smaller](#)

---



Once the ideas have escaped there's no getting them back ...

"Intellectual property" is one of those ideologically loaded terms that can cause an argument just by being uttered. The term wasn't in widespread use until the 1960s, when it was adopted by the World Intellectual Property Organization, a trade body that later attained exalted status as a UN agency.

WIPO's case for using the term is easy to understand: people who've "had their property stolen" are a lot more sympathetic in the public imagination than "industrial entities who've had the contours of their regulatory monopolies violated", the latter being the more common way of talking about infringement until the ascendancy of "intellectual property" as a term of art.

Does it matter what we call it? Property, after all, is a useful, well-understood concept in law and custom, the kind of thing that a punter can get his head around without too much thinking.

That's entirely true - and it's exactly why the phrase "intellectual property" is, at root, a dangerous euphemism that leads us to all sorts of faulty reasoning about knowledge. Faulty ideas about knowledge are troublesome at the best of times, but they're deadly to any country trying to make a transition to a "knowledge economy".

Fundamentally, the stuff we call "intellectual property" is just *knowledge* - ideas, words, tunes, blueprints, identifiers, secrets, databases. This stuff is similar to property in some ways: it can be valuable, and sometimes you need to invest a lot of money and labour into its development to realise that value.

### **Out of control**

But it is also dissimilar from property in equally important ways. Most of all, it is not inherently "exclusive". If you trespass on my flat, I can throw you out (exclude you from my home). If you steal my car, I can take it back (exclude you from my car). But once you know my song, once you read my book, once you see my movie, it leaves my control. Short of a round of electroconvulsive therapy, I can't get you to un-know the sentences you've just read here.

It's this disconnect that makes the "property" in intellectual property so troublesome. If everyone who came over to my flat physically took a piece of it away with them, it'd drive me bonkers. I'd spend all my time worrying about who crossed the threshold, I'd make them sign all kinds of invasive agreements before they got to use the loo, and so on. And as anyone who has bought a DVD and been forced to sit through an insulting, cack-handed "You wouldn't steal a car" short film knows, this is

exactly the kind of behaviour that property talk inspires when it comes to knowledge.

But there's plenty of stuff out there that's valuable even though it's not property. For example, my daughter was born on February 3, 2008. She's not my property. But she's worth quite a lot to me. If you took her from me, the crime wouldn't be "theft". If you injured her, it wouldn't be "trespass to chattels". We have an entire vocabulary and set of legal concepts to deal with the value that a human life embodies.

What's more, even though she's not my property, I still have a legally recognised *interest* in my daughter. She's "mine" in some meaningful sense, but she also falls under the purview of many other entities - the governments of the UK and Canada, the NHS, child protection services, even her extended family - they can all lay a claim to some interest in the disposition, treatment and future of my daughter.

### **Flexibility and nuance**

Trying to shoehorn knowledge into the "property" metaphor leaves us without the flexibility and nuance that a true knowledge rights regime would have. For example, facts are not copyrightable, so no one can be said to "own" your address, National Insurance Number or the PIN for your ATM card. Nevertheless, these are all things that you have a strong interest in, and that interest can and should be protected by law.

There are plenty of creations and facts that fall outside the scope of copyright, trademark, patent and the other rights that make up the hydra of Intellectual Property, from recipes to phone books to "illegal art" like musical mashups. These works are not property - and shouldn't be treated as such - but for every one of them, there's an entire ecosystem of people with a legitimate interest in them.

I once heard the WIPO representative for the European association of commercial broadcasters explain that, given all the investment his members had put into recording the ceremony on the 60th anniversary of the Dieppe Raid in the second world war, they should be given the right to own the ceremony, just as they would own a teleplay or any other "creative work". I immediately asked why the "owners" should be some rich guys with cameras - why not the families of the people who died on the beach? Why not the people who own the beach? Why not the generals who ordered the raid? When it comes to knowledge, "ownership" just doesn't make sense - lots of people have an *interest* in the footage of the Dieppe commemoration, but to argue that anyone "owns" it is just nonsensical.

Copyright - with all its quirks, exceptions and carve outs - was, for centuries, a legal regime that attempted to address the unique characteristics of knowledge, rather than pretending to be just another set of rules for the governance of property. The legacy of 40 years of "property talk" is an endless war between intractable positions of ownership, theft and fair dealing.

If we're going to achieve a lasting peace in the knowledge wars, it's time to set property aside, time to start recognising that knowledge - valuable, precious, expensive knowledge - isn't owned. Can't be owned. The state should regulate our relative interests in the ephemeral realm of thought, but that regulation *must* be about knowledge, not a clumsy remake of the property system.

guardian.co.uk © Guardian News and Media Limited 2009