Chapter V

Intellectual Property Rights, Resource Allocation and Ethical Usefulness

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Abstract

Intellectual property rights (IP) are established through the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement (part of the Uruguay Round Agreements creating the WTO) as global and uniform. This absolute IP may provide such opportunities for rent-seeking that misallocations may occur, resulting in a perception of IP as ethically unuseful.

Introduction

Material property rights have been increasingly limited as a result of social and cultural pressures and are exercised according to societal values, with a view toward ethical usefulness. Intellectual property (IP) is still stated in absolute terms and, via the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, part of the WTO/GATT Uruguay Round Agreements, in a globalized way.

This contribution suggests that the exercise of absolute intellectual property rights, given their basic difference from material property rights, provide such opportunities for excessive rent-seeking that misallocations may have been made and are continuing to be made, resulting in a perception of fundamental injustice of intellectual property rights as they are exercised beyond societal values, that is, in an ethically unuseful way. The chapter questions whether the debate on IP and free access to information should not be restated as a debate on excessive rent-seeking, and whether allocations of resources in IP are ethically useful vis-à-vis societal values.

Material Rights: Roman Origins and Enlightenment Views

In Roman law, the first possessor of a thing became the owner by right of occupancy ("Res nullius fit primi occupantis"). Occupancy was defined as a person taking physical possession of something, which at that moment was the property of no man ("res nullius"), with the view of acquiring property in it for him. In certain cases, that intention was required to be established through formal acts instituting "appropriation." Roman law viewed occupancy as a natural process, a normal mode of acquisition by which the earth and its fruits, originally held as a common good, became the legitimate property of individuals.

Medieval and Enlightenment societal views recognized the acquisition of property through occupancy and possession as a form of natural law, acknowledged in common law as appropriation. As William Blackstone (1765) indicated: "When mankind increased in number, it became necessary to entertain conceptions of more permanent dominion, and to appropriate to

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