

A Justified System of Intellectual Property Rights

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ABSTRACT

I argue that weak type-protection is the form our legal intellectual property rights should take. Other intellectual property regimes—specifically, strong type-protection (like that of our current American patent system) and no intellectual property protection—are both unjustified. I argue for weak type-protection (and against the other two regimes) from the perspective of many different ethical theories; these theories span the gamut from those which philosophers tend to find plausible to those which are usually used in the literature in the context of the justification of intellectual property rights.

Weak type-protection allows a claim over a class of objects; according to this view, one can come to own an original specific token, as well as have a claim on some uses of copies of that original token—that is, owners have some protection over copies of their ideas (unlike under a regime of no intellectual property). Importantly, unlike strong type-protection, weak type-protection requires that all owned tokens be causally related to an original owned token; this allows for independent invention amongst two or more individuals (something that strong type-protection denies).

Since weak type-protection is justified on both consequentialist and deontological theories, and since, again, the theories I address are both independently plausible and relevant in the context of the justification of intellectual property rights, there is a strong presumption that, on any plausible theory, weak type-protection is the form our legal intellectual property rights should take.