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# Limiting the social power of intellectual property rights through human rights and competition

### Citation for published version:

Brown, A 2010, 'Limiting the social power of intellectual property rights through human rights and competition'.

### Link:

[Link to publication record in Edinburgh Research Explorer](#)

### Document Version:

Publisher's PDF, also known as Version of record

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## Limiting the social power of intellectual property rights through human rights and competition

Contextualising intellectual property in innovation  
systems perspective

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4 March 2010

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# Overview

- IP must be/is the starting point
- Human rights and competition might be more fundamental
- Arguments can be made for human rights and competition to prevail
  - only in rare cases and there is unlikely to be wider policy change
- BUT
  - IP doesn't always reward innovation – even if obtained
  - a greater regard for ongoing competition can lead to more innovation, without backwards looks at IP
  - human rights can fuel CSR, new attitude to funding innovation and sharing it
  - SO THIS IS A REALLY GOOD EVENT!



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# IP

- It's there
  - TRIPS
  - is sought
    - pharma, Microsoft/Rambus, new UKIPO guidelines for EST, FMCG
    - small business initiatives
- Confers power to control use of innovation
  - blocking new innovation
  - preventing wider social use
    - essential technologies
- **CAN BE FETTERED – DOES NOT EXIST IN (LEGAL) ISOLATION**



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# Competition

- More established – can be made to share
  - US
    - Trinko
  - EU
    - IMS, Microsoft
    - TTBE
- BUT very rare (market, abuse) AND likely need to develop a new product
  - good for innovation, not for social benefit
- Even if it's a standard, movement away from requiring sharing
  - Rambus – even where network effect
- Costly, lack of control
- No global competition law



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# Human rights

- MUCH more controversial
  - do they exist, states or individuals, do they attach to IP
- UN Sub-Commission resolutions re TRIPS, WTO DSS looking to human rights, Doha Declaration
- EU – Lisbon, Charter, innovation focus
- *Ashdown, Wind Done Gone, Laugh it Off* - can prevail in courts
  - Cf *Harper & Row, Budweiser*



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# DOESN'T Work?

- Large business
- Small business
- BUT
  - NIAC
  - National IP policies
  - US 301
- Funders? Shareholders?



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## In the end

- A positive argument can be made for IP
  - a policy solution (new TRIPS) unlikely
    - ACTA!
- If IP starts at the centre of a business model, it will remain there
- Alternative sources of funding, with less IP, can mean more willingness to share
- EGTT/Copenhagen Accord suggests more likely (or possible)
  - Malaria
  - Creative Commons



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# A contribution

- IF funders, shareholders, governments, directors stood back from IP
- THEN
  - competition could form part of new willingness to explore new innovation and forms of reward
  - human rights could support equitable sharing
  - without the need for the eternal battle with IP



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- THANK YOU ALL!
- AND TO FUNDERS



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