**[Property difference](https://www.dawn.com/news/1604239/property-difference)**

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IN Pakistan, intellectual property is viewed with the same lens as tangible property that includes land or physical assets. This should not be the case as intellectual property is hardly a tangible form of property.

Conventional property law aims to offer property owners protection for life, whereas intellectual property law offers limited rights to inventors so that the latter can capture the value of their invention for a specific period of time.

One of the main reasons behind the existence of conventional property rights can be traced to what is known as the ‘tragedy of the commons’. Finite natural resources were being overused because there was no mechanism in place to allocate them efficiently unless they were handed out in the form of property. To apply this idea to intellectual property is fundamentally flawed.

Information, for one, cannot be depleted. It is a public good, which makes its consumption non-rivalrous and non-excludable. For example, my use of information does not impose any direct cost on anyone and it is not something from which others can easily be excluded, the exception being trade secrets.

Intellectual property is not a response to scarcity.

Intellectual property, then, is not a response to scarcity, as conventional property law is. In practical terms, it is a conscious decision to createscarcity of the property invented or authored by someone in order to artificially boost the economic returns on it and incentivise inventors or authors. In fact, intellectual property falls somewhere in the basket of the ‘tragedy of the anti-commons’ which is the result of excessive property rights. The protectionist view of traditional property rights, therefore, cannot be applied to intellectual property.

The intangible ‘thing’ that is being protected by intellectual property rights is information of which patents, trade secrets and copyrights, as well as reputation, are the subject. According to this principle, information is taken out of the public domain and placed into the hands of the creator solely because of what the latter has added to the information. That means that inventors share information concerning their inventions with the public but prevent others from making, using or selling it on the basis of their contribution.

Ultimately, intellectual property rights are separate from tangible assets and unlike traditional property laws where your claim is restricted to the property being trespassed upon. The separation between protection and infringement is important because it means that where intellectual property is concerned, an inventor cannot infringe on tangible goods. By way of example, an author who claims that a fundamental character of her book series has been copied and reproduced in a film is not saying that the original, physical copies of her ‘books’ have been stolen but that her expression of an idea has been taken away from her without her consent, thus redefining the concept of property.

This is, perhaps, an extension of the principle of conventional property rights that “whoever owns the soil, it is theirs all the way up to Heaven and down to Hell”. However, even within the domain of property rights, this view is beginning to lose its impact and is being abandoned but the same is not happening with intellectual property rights. In fact, this principle exposes the fundamental flaw in treating intellectual and tangible property in the same way.

A better way of understanding it would be to see intellectual property in the light of unfair competition or unjust enrichment. Take the example of copyrights that protect literary and artistic works. Legally, I should not be permitted to write a book that has a similar character to Harry Potter, a character who is an orphan wizard who attends Hogwarts and fights against an evil wizard who intends to become immortal. Writing such a book would mean that (a) I don’t possess the innovation required to write something that is different from something already present in the market; (b) if I include such a character and if it becomes a success, I am cashing in on someone else’s creation of a character that has taken years to form; or (c) I am causing confusion amongst those reading my book who might think that either the author has allowed me to use the traits of the character or that my work is an extension of her story. In all three cases, it is a free ride for me on someone else’s work and competing with them which constitutes unfair competition with the original creator.

These examples and many more present a fitting scenario of why the treatment of intellectual property rights should be different from that of conventional property rights.

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