

Copyright Q & As Tutorial Series Transcript

[What kind of property is copyright?](#)

Hi, I'm Copyright Cate. Welcome to the Copyright Q&As tutorial series. In this tutorial we probe the broad question "what is copyright" by looking at the more specific question, "what kind of property is copyright?" A companion tutorial looks at the related question, "what kind of right is copyright?"

On completion of this tutorial, you will be able to:

- state two distinguishing features of intellectual property, and
- describe copyright's purpose as a form of intellectual property.

Let's step back for a moment to consider the question, "what is copyright" in a broader context. In Canada, copyright is one of six types of intellectual property that are protected by a federal statute.

Copyright, along with patents and trade-marks are the three types of intellectual property you have probably heard about. But did you know we also have statutes that cover industrial design, integrated circuit topography and plant breeders' rights? In addition, some types of intellectual property are protected by law but do not have their own statute, such as trade secrets and confidential information.

Explaining the nature of "intellectual" property," like answering the question "what is copyright?" in just a few words is challenging because intellectual property is an abstraction. In other words, intellectual property is intangible since it consists entirely of ideas.

Perhaps it's helpful to contrast intellectual property with physical property such as your shoes or my pen. Two qualities of intellectual property that distinguish it from physical property are its non-rivalrous and its non-excludable nature.

We say something is non-rivalrous when its use by one person doesn't reduce the ability of anyone else to use it in the same way. Think of music, poems, plays and paintings that were created hundreds of years ago. We can still enjoy all of them today with no reduction in their quality despite the passage of time and enjoyment by countless individuals before us.

Since intellectual property doesn't get used up or become degraded with repeated use, we say it is non-rivalrous. In contrast, the nature of physical

property, such as my pen or your shoes, is rivalrous because they will become worn out with repeated use and will eventually no longer be usable by anyone.

We say something is non-excludable when it lacks a natural means to prevent everyone from accessing or enjoying it. Some examples are air, sunshine, street lighting and public radio, since there's no easy way to put fences around them or limit their use only to those who pay a fee or obtain permission.

Intellectual property is non-excludable in the sense that once it is known to someone, they can't simply remove it from their memory. After you write a poem, it's unlikely that you could then forcibly exclude it from your mind. But physical property like pens and shoes are easily excludable. For example, if your shoes are in your gym locker on campus and you happen to be at home, you are excluded from being able to wear them right now.

Because intellectual property such as copyrighted works are non-rivalrous and non-excludable, they are "property" in a sense that is distinctly different than physical property. It's therefore problematic to talk about intellectual property as though it's equivalent to physical property. If I take your only pen, you will have nothing to write notes with, but I cannot actually take your poem away from you. If I were to claim that I wrote your poem, that would not deprive you of your copyright owner's rights or leave you with no poem, even though making such a claim would be unethical.

If copyright in a work is a kind of intellectual property where the work is not depleted with repeated enjoyment by many people and cannot easily be put under lock and key by the owner, how should we properly think about the boundary between private ownership of a copyrighted work and public enjoyment of its use?

The Supreme Court of Canada provided an answer to this question in a 2002 case initiated by a painter named Claude Th  berge. The Court said, the Copyright Act is usually presented as a balance between . . . the public interest in encouraging and disseminating of works of the arts and intellect and obtaining a just reward for the creator." The Court went on to say "The proper balance among these kinds of public policy objectives lies not only in recognizing creators' rights but in giving due weight to their limited nature."

Here the Court was not claiming anything new about copyright. It was merely pointing out the societal bargain that was present in the first copyright law, the Statute of Anne, which was enacted to encourage

learning. What the Court's ruling did signal, however, was that both sides of the bargain need to be kept in balance.

The idea of balanced copyright was adopted by the Canadian government as a guiding theme for the Copyright Act amendment process initiated in 2011. The Act doesn't have a purpose statement, but the preamble to the amendments passed in 2012 acknowledges the Copyright Act supports both private "market place" concerns as well as public interests like culture and access to copyrighted works.

An issue that arises when we probe the question, "what kind of property is copyright?" is what is copyright's purpose? There appears to be no consensus on how to justify copyright law. But the many theories that have been proposed can be categorized into two groups: natural law approaches, and public good approaches.

In the natural law approach, all creators are rightfully entitled, as a fact of nature, to own what they create themselves. In this view, codified laws simply formalize creators' property rights that naturally come into existence on creation of their works. Countries that adhere to natural law justifications for copyright tend to be governed by civil law systems that treat the purpose of copyright as protection of an author's personality.

On the other hand, public good approaches see copyright as a public policy tool to achieve beneficial goals for society as a whole such as the encouragement of learning. In this view, copyright is a limited carve-out from what is otherwise the public domain of creative works and ideas. We'll take a closer look at the public domain in another tutorial. In general, having copyright as a kind of intellectual property is justified by the overall advantages enjoyed by society when the copyright system functions properly.

Thanks for viewing this tutorial in our Copyright Q&A series. You can check out the Sources used in this tutorial as well as Further Information if you'd like to find out more about copyright.