Why Intellectual Property Is Protected By The U.S. Constitution

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The Constitution of the United States (Article I, Section 8, Clause 8) grants to Congress the powers to promote "the progress of science and useful arts" by providing inventors the limited but exclusive right to their discoveries. This applies to copyrights and patents, with trademarks similarly protected by Congress under the Commerce Clause (Article I, Section 8, Clause 3). Together, they are all protected under the umbrella of intellectual property.

The fundamental concept behind protecting intellectual property is that inventors, innovators, artists and others should be able to enjoy the fruits of their creativity and labor for a specified time period, after which the material becomes available for public use, according to E. Anthony Wayne, former U.S. Assistant Secretary of State for Economic and Business Affairs, whose views were published in the U.S. Department of State publication, *Focus on Intellectual Property Rights (2008)*. He goes on to say: "Society benefits because this incentive to create will yield a rich and varied cultural menu for its citizens. Indeed, one can say that copyright protection is a necessary ingredient for ensuring cultural wealth in our societies."

In societies, such as developing countries, where intellectual property is not protected, ingenuity is stifled and progress stymied.

Americans have always been innovators and inventors. It is part of the pride that we take in our common heritage. Patents provide the protection and the incentive, financial and otherwise, for taking a risk. They protect diverse inventions such as industrial designs, manufacturing processes, high-tech products, and molecular compounds.

Yet, the idea of protecting intellectual property remains abstract to some. The

practicality of enforcing this Constitution protected right becomes clear when actual cases are examined. Here are three that stemmed from inventions in the late 1990's:

1. Amazon's 1-Click

Amazon was granted a patent for 1-click technology on September 28, 1999. Also known as one-click buying, the technology allows customers to make an online purchase in a single click—without having to manually input billing and shipping information every time they purchase a product. Instead, 1-click uses a billing address and credit card or other payment info that is kept on file in the user's account. There have been several patent disputes surrounding 1-click technology, including a patent infringement lawsuit filed against Barnes & Noble in 1999—only a month after Amazon's patent was issued. Barnes & Noble offered a checkout option called "Express Lane," which also enabled shoppers to make a purchase with one click. The lawsuit was settled in 2002; however, the terms were not disclosed. *(Source: Legal.zoom.com)*

2. Napster

In one of the most well-known dot.com intellectual property cases, the Recording Industry Association of America (RIAA) sued Napster, a file-sharing site. Founded in 1999, Napster allowed users to share music files and thousands of people began downloading songs for free rather than buying CDs. However, Napster did not own the rights to the music that people were uploading to its servers, where the music was stored and ultimately shared. The rights were owned by the recording artists and recording studios. The RIAA sued Napster and won, causing Napster to close its doors—or its servers, as the case may be. Napster now operates as a fee-based music download site and pays licensing fees for the music it sells.*(Source: Legal.zoom.com)*

3. AVS Technology

AVS Technology covers the input into a computer system of vendor attributes and project specifications, which are then matched to determine a subset of qualified vendors, followed by the sending of the specifications to the qualified vendors and the receiving of at least one bid. While this method may be in use today across many industry sectors, it was first patented in 2002 and subsequently protected with further patents in 2008 and 2010, with additional patent claims pending on an active continuing application. AVS Technology makes it possible for organizations to add significant sums to profitability through savings in the procured costs of custom goods and services (such as specialty manufacturing, temporary staffing, construction services, machined parts, textiles, direct mail, marketing materials, commercial print, packaging, labels, and more).

The inventor has a right, even an obligation, to protect intellectual property and have the technology in use licensed. In the recording industry or consumer goods industry, reproduction or use without licensing is called pirating. A case is pending to protect AVS Technology. *(Source: e-LYNXX Corporation vs. InnerWorkings, Inc.,*

et.al.)

Protecting intellectual property encourages problem solving through invention. Without this constitutionally protected right, what is the incentive to labor and invest in a new product or service that will benefit society? The concept of protecting intellectual property is based on a trade-off. The inventor is granted an economic incentive to take risks and create.The public benefits not only from the invention itself, but also from the inventor's knowledge for possible uses in other applications.

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William Gindlesperger is a nationally recognized entrepreneur, inventor, author and consultant. He founded ABC Advisors and its successor, e-LYNXX Corporation, in 1975. Profit, non-profit and government organizations alike have benefited from his strategic insight and innovation that result in measured and substantial cost reduction. For more information visit www.e-LYNXX.com *[1].*

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