

Exploring Intellectual Property with Adam Moore

Christiane Wisehart: I'm Christiane Wisehart. And this is Examining Ethics, brought to you by the Janet Prindle Institute for Ethics at DePauw University.

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Christiane: Think about what you're doing right now. Maybe you're playing a game on your phone, or using a patented thermos to drink coffee. And, of course, you're listening to your favorite ethics podcast. So what do those all have in common? They're all forms of intellectual property -- ideas we interact with on a daily basis. If you think an idea that you came up with is yours, then you might think it's wrong for someone else to copy that idea and take credit for it. Today, we'll hear from Adam Moore, a philosopher who defends the idea that intellectual property should be both legally and morally protected. Then later in the show, we'll hear a fascinating story about collective intellectual property in Guatemala from independent producer Sandra Bertin. And make sure you listen to the end--we have a new idea we need your help with. Stay tuned all of that and more on today's episode of Examining Ethics!

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Clips taken from "A Comics Life Radio on KCAA" Friday, January 22, 2016

[sound effect of Skype call]

[laughter]

Man 1: Hello you are live on the air with the Comic's Life Radio with Sandy and Billy!

Man 2: I'm just wondering what your take is on this Norm MacDonald joke stealing controversy? Apparently a comedian named Tony Hinchcliffe stole a joke of his for his Netflix special? And I'm just wondering what y'all think about it.

Man 3: It's part of the business.

Man 1: That doesn't make it right though.

Man 3: If the guy takes the whole act, then you've got something to say, but if you're about one joke then you shouldn't be in the business.

Man 4: No, I agree, it's part of the business, but the thing that's bad about it is that it's on a Netflix special, so he's making money off a Norm joke...

Man 3: I'm on five guys' CDs, it doesn't...nobody knows...[fade]

Christiane: If you watch a lot of comedy and follow comedians, you'll know that joke theft is a hot topic these days. There are hundreds of YouTube videos comparing jokes side-by-side and tons of talk shows like this one debating the idea of joke theft. And what all of these people are arguing about is intellectual property.

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You probably already have some general idea of what intellectual property is, and why it might be an important thing to think about. But if you're anything like me, you've never really thought beyond the surface. Intellectual property expert and philosopher Adam Moore has. In our first

segment on today's show, he talks us through some of the most important ethical issues related intellectual property. But before we talk to him, we need a good working definition of what intellectual property is. Intellectual property refers to things created by the human mind. Inventions, songs, poems, novels and recipes are just some examples of types of intellectual property.

Let's say I'm a comedian (which I definitely am, trust me). I sit in my office and write a joke about growing up in small-town Indiana. I perform the joke over and over at open mic nights and stand-up comedy shows. That joke is intellectual property, and as long as I'm the one who came up with it, it's *my* intellectual property. But Adam Moore told me something I'd never really thought about before: Unless I write my joke down, or record myself performing it, it's not really legally protected.

Adam Moore: What intellectual property does within legal systems is protect the physical instantiations of abstract ideas, whether it's a copyright, a patent, a trademark, a trade secret. Whatever you think of the metaphysical status of an idea, it's in your head, you might think that's just a brain state that is a set of chemical, electrical impulses in your brain. Doesn't matter for intellectual property law. It's just whenever that takes a physical form, like you write it out on a piece of paper, you chisel it into stone, you record it on a device, you can get rights to control access to and uses of that intellectual work for a period of time.

Christiane: Adam explained that you don't necessarily need to be the original creator of the intellectual work to own the copyright or patent on it.

Adam: So if you stand up in front of a crowd of people and you say, "I just thought up a new poem, it's never been written down or saved or codified, or instantiated in any way, shape, or form, but it's what's in my head," and I'm in the audience, and I push record or I write it down, I get the copyright. You don't. And so, you could sue for a number of different kinds of infringements but given that it wasn't fixed prior to my recording, you couldn't get me on copyright violation. You'd have to go with a different area of law. But most of the time, it's gotta be instantiated.

Christiane: Like me, you might be surprised to learn that it's only ideas captured in physical form that are protected by law. It's even more shocking to hear that it's legal for someone to own the copyright on another person's ideas. Adam explained that when it comes to intellectual property though, there's a big difference between what's legal and what's morally right.

Adam: We might be saying, legally, that, look, we don't know about giving you legal protections for the contents of your mind because that would be too hard to defend in the law, or to codify in the law. We don't know how that would work. So we're only gonna protect moral claims to intellectual works that end up being codified or take physical form in some kind of way. But you might say -- as a philosopher and an ethicist, I would say -- Look, if you've got an idea kicking around in your head, maybe you dream out loud and I sneak in and listen to and I steal your idea. I might not be violating copyright or trademark, or the law, any of these different areas. But I think I would be morally violating a property right that you might have. Imagine I work really hard on a recipe for spicy noodles, I finally perfect my recipe, and I don't write it down. I just keep it in my head. Now, if you were to come along and in some way kind of steal that, I think you will have done something immoral, something that you didn't have a justified claim to. You

will have taken something that I've created that didn't exist prior to my act of ingenuity and effort. That isn't codified in the law right now. But I still think you might be doing something immoral. So the law may not reflect perfectly what I think our moral claims are related to intellectual work.

Christiane: Even if the jokes I write as a real-life comedian aren't technically copyright-protected, Adam argues that I could still consider the jokes "mine" and that it would be morally wrong for others to copy them. So let's say you agree that intellectual property should be protected. To defend that claim, Adam gave us two common ethical justifications for intellectual property rights. The first argument comes from utilitarianism. Utilitarianism is basically the idea that the most ethical thing to do is whatever benefits the most people.

Adam: If you're utilitarian, if you're looking for good consequences, and you think that our legal institutions related to intellectual property ought to promote flourishing and wellbeing for everyone affected, I think there's clear arguments that come down on the side of intellectual property. It's pretty difficult to get to certainties, but when you compare places, cultures, or countries that don't have copyright or patent institutions, and you compare their levels of innovation, it looks like the jury is in that the countries that do have these institutions do better, all things considered, than the countries that don't. By holding out copyrights, patents and trademarks, these kind of limited sets of rights to all those inventors, we incentivize them to create and to innovate and to burn the midnight oil. And that's why we get more stuff created, more innovations, and we have more to distribute. So we get more to talk about, we get more to view at the end of the day, we get more to consume. We get more innovation and that drives upward this kind of flourishing across the board.

Christiane: If you're not a utilitarian, Adam says there's another reason to protect intellectual property. It's based in deontology, which is a way of thinking about ethics that focuses on rules and duties, rather than consequences. So if there's a rule that you should never steal, a deontologist will always follow that rule, even if following it doesn't have a good outcome.

Adam: If I have a right, for example, to privacy, that means I get to decide who has access to and control of private information about myself. That may not benefit you. That might make you worse off, but my deontic-based right trumps whether or not you're benefited. My rights, my privacy, your privacy rights, I think, are deontically based in duties and obligations we have that stand independent of goodness or badness of consequences. Same thing with my intellectual property rights. If the deontologist can give you an argument for why there are property rights to intangible goods, whether or not you're benefited by that or worsened by that is really beside the point.

Christiane: Of course, as with any issue in moral philosophy, there are going to be arguments on the other side. Adam talked me through a couple of the most common objections to the idea of intellectual property. He explained that people who argue against intellectual property rights claim that ideas and information are simply different than physical property and should be treated differently. For example, say you own an iPhone. If I came to your house and stole your phone, you'd probably think that was wrong, in part because I took a thing away from you and you no longer have access to that thing. But say you write and record a song. If I made a secret copy of the song and effectively stole it from you, you'd still have the song. My stealing the song doesn't mean that you no longer have access to it.

Adam: We can both have it. And so why would we ever want to restrict access to these intellectual goods when we could all have it? I mean, so it could be a song by, I don't know, I'm a big fan of the rock group Rush from back in the day. So, Rush, their song 2112 -- is the best song by the way -- it's a 20 minute long song, and I can better my life by listening to it, and you can have a copy of it, we all can have a copy of it. We could all be bettered by having access and in some sense, by walling it off, it's making things worse off. So that's one of the main arguments against. Now, switch the case from a song to private information about someone. We could all have access to my medical records, whatever private facts you want to talk about in my life. And let's just assume for the sake of argument that if we were to all have access to all those private facts about Adam's life, you would all be better off. Is that a reason? Is that an argument for why you should have access to my private information? So as soon as you go one step into privacy-you might think that this argument just vanishes. ~~[[moved below: And I think kind of what's going on in a lot of student's ... this I think is my own take on the symptom of this argument ... is that they just want content. A lot of people just want content and they want it now, and they don't like that they have to pay for access. But what I'd like to remind everyone is that it wouldn't exist but for that restriction on access and the monetization of all of [00:33:30] that.]]~~

Christiane: Adam told me that another common objection to the idea of intellectual property rights comes from people who argue for free speech.

Adam: They'll say, "I'm suspicious of intellectual property rights, especially copyright, because it restricts freedom of speech, thought and expression. There's a lot of ideas out there that I could have access to, and my life would be better if I had access to these ideas, and I can't have access because I lack the money to buy it." So that's called the free speech argument against intellectual property. One of the things the defender of intellectual property theorists will say to the free speech attack, is they'll say, " We have different ways to access this information without actually having to buy it. We have fair use rights, we have different kinds of ways to use this stuff. Even you can go to the library and pick up a copy." And look at it that way. Our whole system is designed so we innovate content creation. We grant authors and inventors limited rights. We give authors and inventors these rights because that will cause them to innovate more and we'll have more content to distribute and talk about than we otherwise would. So we get more freedom of speech, we get more content by allowing initial restricted access because that is the way we incentivize content creation.

Christiane: Even though Adam defends the concept of intellectual property, he still thinks there's a lot of problems with the way intellectual property law works, especially in the United States. For one thing, copyright law protects intellectual property for the lifetime of the person who created it *plus 70 years*. That means if I'm a comedian (and I definitely am) and I die in 30 years, the jokes I write down or record would be copyright-protected and restricted for a century in the United States. Adam told me he thinks that might be going too far. He also explained that many current intellectual property laws make it so that big corporations and companies can easily game the system.

Adam: I think our current legal institutions of copyright and patent have been molded, modified, perverted might be a good word, to line the pockets of certain economic interests, big corporations, and people who gobble up lots of copyrights. They don't create the content, they buy the content and they buy the copyrights. And then, they defend it. So the little guy doesn't

seem to be all that protected. To be protected you have to have financial backing. A lot of times that means even if I have a great idea that I patent and somebody infringes, more often than not, I'm gonna bring suit. Maybe it's a justified suit, maybe they really did just steal it or take it or whatever. They're gonna counter sue that I stole some of their stuff, even though it might be totally false, and they are gonna litigate me into the ground. It can take 10 years for this to happen. So what they'll then say is on the side, "Hey, Adam. Why don't you just let us buy you out?" And then I'll go, "Okay, for 10 million. Although, I could've made hundreds of millions, I'll just buy out." So all of that is a problem.

Christiane: Even though there are many problems with the way intellectual property is legally protected, Adam still claims that it's important to protect intellectual property rights. He explained that when those rights are threatened, it's not just big corporations like Microsoft or Disney that are being harmed. He says the people who are hurt the most by things like copyright violations and patent infringements are individual creators, artists and inventors.

Adam: What piracy has done is destroy the independent movie house. So I would say if you care about independent movies, you should be thinking that piracy is part of the problem. And that the impulse that "I want my content, I want it now and I ain't gonna pay," has fueled the destruction of a whole range of these independent movie houses. You see that happening with music. A lot of people just want content and they want it now, and they don't like that they have to pay for access. But what I'd like to remind everyone is that it wouldn't exist but for that restriction on access and the monetization of all of that. when you see people who are craftspeople, who spend their lives working at a craft, fine art, creating sculptures or paintings or music or movies or whatever, to support that kind of endeavor a fair bit of money. Think about it, they gotta pay the bills. So to create and sustain a class of people who can delve that deep into creative arts, it costs a lot of money. And what piracy is doing is destroying the ability for those people to exist.

Christiane: Adam argues that intellectual property rights protect creators.

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If we want to live in a world with lots of art and inventions and music and movies and poetry, we have to protect the livelihood of the people who make those things. There's one group of women in Guatemala who are doing just that--fighting to protect their intellectual property. Independent producer Sandra Bertin brings us the fascinating story of the National Movement of Mayan Weavers.

Sandra Bertin: In the United States, intellectual property is first explained to us at school as children when we learn about plagiarism-- taking someone's ideas and passing them off as your own. We are warned against cheating in our universities and we have laws protecting the intellectual property of individual people and companies. For example, If I write a book about a young orphaned wizard who must fight an evil wizard in order to save the world, not only would J. K. Rowling be royally peeved at me, she would probably sue me. Because she owns the intellectual property of the Harry Potter series.

Now this example might make a lot of sense to you-- but thinking of intellectual property as belonging to a single person is not the only way to think about it. Consider Guatemala. Guatemala has similar intellectual property laws to the United States that protects the intellectual property of individuals and companies. But a group within Guatemala has challenged the philosophical and legal definition of intellectual property. This group of Mayan women is called The National Movement of Mayan Weavers, and they are fighting to gain the legal right over their collective intellectual property: their unique, colorful, and deeply meaningful clothing designs.

Though Mayans have existed in Guatemala since 2000 BC, they have frequently faced marginalization and even violence from the Guatemalan government. From 1960-1996, over 40,000 Maya were killed by the Guatemalan government and though war crimes against the Maya have ceased, marginalization and racism continue.

The Mayan concept of intellectual property is different because traditions of medicine, philosophy, dance and art have been passed down over thousands of years and are culturally considered the property of the entire group -- not one person or one company.

Weaving clothing is an important method of artistic expression in Mayan culture. Mayan women weave stories into their clothing in a way that is unique to their traditions. One of the leaders of the Movement, Angelina Aspuac, says it upsets her when companies take Mayan designs and mass produce them.

[Angelina Aspuac speaking, Sandra Bertin translating in a voice-over]

Angelina Aspuac: It's not that we're against the shops and them selling. We're just looking for them to respect, engage with the communities and ask for permission, which is what they don't do. Any store -- big and famous or small -- just grabs the textiles. All are threats because they don't respect the community, taking the textiles as if they're of public domain.

Sandra: Angelina explained that Mayan women see themselves as collective authors of a story. That's because the symbols and patterns in Mayan textile designs have been cultivated over thousands of years. Each item of clothing can tell a story, just like a book, song, or painting can. To people unfamiliar with the clothing we see bright colors and shapes. However, these colors and symbols have deep philosophical meaning to the Maya people. Angelina told me that each small community of Mayans in Guatemala use different colors to represent their town. Angelina's community uses red and white.

Angelina: The snake is a very important and interesting symbol for the Mayan culture because it's related to time, which is circular. And the way the snake rests looks like the garment that women wear over their head to hold their hair. But it's also related to the water, the way the snake moves is the same way a river flows. The snake is related to our world view; the importance of the time, the circular way of reading time; it's almost sacred. Lately, the snake has

been “satanized” -- related to the devil, to hell. All of that was later taught to us by colonization, and we lost the original meaning. But the women keep utilizing the snake in their garments.

Sandra: Just this one symbol of a snake holds so many meanings at once that the symbol itself is almost a story. These colors and symbols are not just aesthetically pleasing, they hold layered philosophical meaning to Mayan people. According to Angelina, owning the rights to their textiles would provide greater financial security for the Mayans. The group doesn't expect an exact amount of money or percentage from people who use their designs. All they ask is for communication, understanding, and some form of payment, or even performing acts of service in lieu of money.

Angelina: First, to engage with the community, understand its context, and talk. It's like someone who writes a book, that has an understanding with the company that will reproduce it; the author and company make the decision whether they will pay for the use and reproduction rights, and if there is going to be a percentage on the earnings that will be given to the author.

Sandra: Other countries in Latin America like Peru, Panama, Argentina, and Venezuela have already implemented collective intellectual property laws specifically to allow indigenous communities to retain the rights to their ideas and creations. But Angelina and her movement have been waiting three years for their bill to even be read by Guatemalan congress. Though the Guatemalan government claims there are more urgent matters to attend to, Angelina says they are delaying because of racism. The government has chosen to continue to profit off of the images of smiling Mayan women that they use to attract tourists to Guatemala, while ignoring the Mayan women's rights over their most deeply cherished cultural artifacts.

Angelina hopes that passing collective intellectual property laws in Guatemala that would give Mayans the rights to their textile designs, would give Mayans greater financial security. She is even more helpful that such a move would not only help the Maya out of poverty, but renew the practice of weaving complex stories of Mayan knowledge and philosophy into fabric. To Angelina, the knowledge of a 4,000 year old culture is at stake.

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Christiane: We're going on our usual summer break for the months of July and August. We've got a lot of great new interviews, stories and ideas to share with you when we come back in September. We've also got a new idea brewing that we need your help with.

A lot of our episodes are pretty one-sided, because we're usually talking to just one or two people working on an idea. This episode is a great example of that--there are a lot of compelling arguments *against* the idea of protecting intellectual property, and we never really get into them. So this is where YOU get to contribute to the show. We're going to start producing bonus episodes featuring your responses to the issues we cover. Do you think the idea of intellectual property is bogus? Let us know! Record a voice memo on your phone and email it to us at

examiningethics@gmail.com. Be sure to include your first name and where you're from. Or, if you're shy about recording your voice, send us an email with your thoughts and we'll read it.

It would be kind of weird to do a show about intellectual property and not talk about the fact that we use free, creative commons-licensed music and artwork for this show. We've used music from amazing artists like Blue Dot Sessions, Cory Gray and Podington Bear. A big thanks to them and freemusicarchive.org for providing their music for free for shows like us. We'd also like to thank the many photographers and artists who make their work available through Creative Commons.

If you want to know more about Adam Moore or intellectual property, we'll have links to his articles on our shownotes page at examiningethics.org. When you visit us there, you can also find out more about independent producer Sandra Bertin, her other work and the National Weavers Movement.

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