



## Conservatives debate IP: A right or a privilege?

By Cassandra Lawrence

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Can copyrights and other intellectual property be treated the same as physical property rights, and just how far should that analogy be taken?

Those were among the key issues during a lively 90-minute roundtable hosted by the American Enterprise Institute yesterday, featuring references that ranged from the Copyright Act of 1790, to the Berne Convention, to Milton Friedman and Emmanuel Kant

Moderator Jeff Eisenach, director of AEI's Center for Internet, Communications and Technology, opened the discussion by referencing a 2010 report from Chicago-based intellectual property merchant bank Ocean Tomo, which found that intangible assets like patents and copyrights now represent more than 80 percent of the value of firms listed in the S&P 500 index.

Mark Schultz, cofounder and co-director of academic programs at the Center for the Protection of Intellectual Property at George Mason University School of Law, further distinguished copyrights as a "narrow property right."

"Property rights," Schultz said, "support self governance as an engine of free expression."

Other panelists pointed to the protection of property rights as one of the main stabilizing effects government can provide, giving examples of poor and unstable societies abroad where the rule of law with respect to property is not respected.

"A lot of the difficulty in the copyrights debate is because we fundamentally see it as a property right," concluded Stan Liebowitz, head of the University of Texas at Dallas' Center for the Analysis of Property Rights and Innovation.

But other panelists argued copyrights should be seen more as a privilege than a right.

"The contours of the rights we create matter," said Jerry Brito, senior research fellow at the Mercatus Center at George Mason University. "There is a schizophrenia in the current

conservative debate over copyrights ... copyrights are a privilege. It's a government-created statutory property and it is a privilege."

Shultz argued the relevant concern is the degree to which copyrights infringe on the liberty of others, noting "if you install a fence, that infringes on my right to roam freely."

"If our only understanding of liberty is if I get to do whatever I darn well please, it is a five-year-old's understanding," he continued. "A grown-up understanding of liberty is ordered liberty, competing claims that need to be reconciled through a system."

Tom Palmer, senior fellow at the Cato Institute, countered that "property rights allow us to live together in peace."

"That is what liberty is very much about, but it doesn't carry over into some guy singing my song," Palmer said.

Panelists disagreed fundamentally on the role of government in maintaining "ordered liberty," with some arguing copyright enforcement isn't stringent enough and while others feel it is too stringent, in a way that had inhibited free markets.

"When the founding fathers created the first copyrights act in 1790, they were thinking about creating professional authors and professional artists," said Jay Rosenthal, senior vice president and general counsel for the National Music Publishers of America. However, citing the economic disparity licensing fees have created, Rosenthal pointed out "the reason we don't know how everything works out is because we've never had a free market."

Palmer expressed skepticism about just how much copyright's actually functioned to promote innovation. Palmer repeated several times, "the burden of proof is on those who would claim it spurs innovation."