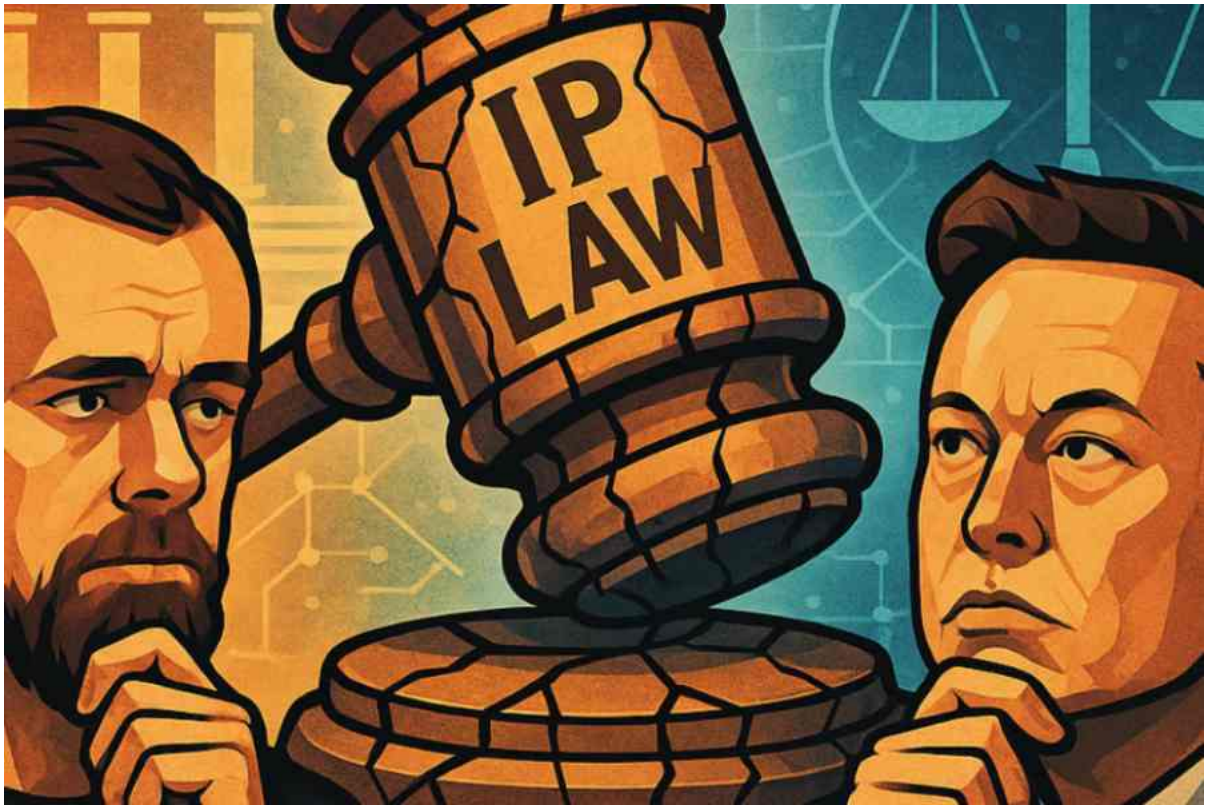
The Hypocrisy of Anti-IP Advocacy



Hello all,

"Delete all IP Laws" - Jack Dorsey
"I agree" - Elon Musk

In a recent exchange that captured significant attention across social media platforms, tech luminaries Jack Dorsey and Elon Musk engaged in this short exchange about intellectual property laws, with Dorsey suggesting we should "Delete All IP Laws" and Musk agreeing wholeheartedly. That was it. Not a word wasted. No debate needed. It reminded me of the Shakespeare “First, Kill All the Lawyers” quote in Henry VI.

This brief but consequential statement reflects a growing sentiment among certain tech leaders that intellectual property protections are outdated constraints on innovation rather than crucial safeguards, now that they no longer need them. However, this perspective dangerously oversimplifies a complex system that has, for centuries, served as the backbone of creative and technological advancement across civilizations. More on this below.

I also review the most recent market report from AST, which usually provides a good pulse of the market as well as a few recent notable patent awards, which have a way to attract attention in the boardrooms.

As usual, as I focus on the macro picture in this newsletter, I want to remind everyone that we track everything that is going on in this world and for those who need their regular dose of news, once again you can follow me on LinkedIn where I post almost daily about some of the most newsworthy events. If you want to catch up on what grabbed my attention these recent weeks, you can access all my posts directly here.

The Hypocrisy of Anti-IP Advocacy

The concept of intellectual property protection dates back much further than many realize. While formal systems emerged in the Renaissance period, the recognition that creators deserve exclusive rights to their work has ancient roots. The earliest known patent-like grant was issued in 500 BCE in the Greek city of Sybaris, offering exclusive rights for culinary creations. However, the modern intellectual property framework began taking shape in 15th century Venice, where the Venetian Senate passed the first codified patent law in 1474, establishing a 10-year monopoly for inventors of new devices. Before that, Murano glass artists could not even leave their island because of death threats to their person if they ever leave with their secret techniques.

The watershed moment for contemporary IP law came with England's Statute of Anne in 1710, which first recognized authors' rights over their creations. This represented a profound shift from previous systems that primarily served monarchs' interests to one that acknowledged creators' inherent rights to their intellectual contributions. The framers of the U.S. Constitution considered intellectual property protection so fundamental that they explicitly included it in Article I, Section 8, Clause 8, empowering Congress to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

These early laws weren't arbitrary restrictions but thoughtful responses to specific problems. Without protection, inventors hesitated to publicly disclose their inventions, fearing immediate copying without compensation. Similarly, authors and artists struggled to earn sustainable livings when their works could be freely reproduced. IP laws created a social contract: society grants creators temporary exclusive rights in exchange for sharing their innovations, which ultimately enter the public domain for everyone's

benefit.

The International Evolution of Intellectual Property Frameworks

As global trade expanded in the 19th century, the patchwork of national IP laws became increasingly problematic. The 1883 Paris Convention for the Protection of Industrial Property and the 1886 Berne Convention for the Protection of Literary and Artistic Works marked the first major international agreements on intellectual property protection. These groundbreaking treaties established the principle of national treatment, ensuring foreign creators received the same protection as domestic ones, and set minimum standards for protection.

Finally, the modern international IP landscape took its current form with the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), administered by the World Trade Organization. TRIPS established comprehensive minimum standards for IP protection among member nations and created enforcement mechanisms previously lacking in international agreements. Today, organizations like the World Intellectual Property Organization (WIPO) oversee a complex web of treaties that balance protection of creators' rights with public access across national boundaries. This international system didn't develop overnight but evolved through careful negotiation, addressing real market failures and creating frameworks that fostered cross-border innovation and cultural exchange. It represents centuries of refinement rather than arbitrary restrictions.

IP Protection as an Innovation Engine

Contrary to the "Delete all IP laws" position, historical evidence strongly suggests that robust intellectual property protection has been a driving force behind innovation and creative production. The explosive innovation of the Industrial Revolution coincided with—and was partly enabled by—the strengthening of patent laws across Europe and North America. Countries that implemented strong IP protections historically saw greater rates of patent filings, research and development investment, and ultimately economic growth.

A landmark study by economists Josh Lerner and Adam Jaffe found that innovations worthy of patent protection increased dramatically following the strengthening of patent rights in the late 18th and early 19th centuries. The medical and pharmaceutical fields offer perhaps the clearest illustration of IP protection's value. Developing a new pharmaceutical requires an average investment of $2.6 billion and years of research, according to the Tufts Center for the Study of Drug Development. Without patent protection ensuring a period of market exclusivity, companies would have little incentive to make such massive investments when competitors could immediately produce generic versions without bearing research costs.

Similarly, the film, music, literature, and software industries depend heavily on copyright protection to support their complex production and distribution ecosystems. The creative sectors contribute approximately $2.25 trillion to the U.S. economy alone and employ over 5.7 million Americans, according to the International Intellectual Property Alliance.

Tech Giants and IP: A Complex Relationship

The tech industry's relationship with intellectual property presents a striking paradox. The same companies whose leaders occasionally question IP laws' value have built vast fortunes on intellectual

property protection. Apple's design patents, Google's search algorithms, Microsoft's software innovations, and Meta's social networking methods are all zealously protected through aggressive patenting and litigation. The tech sector files hundreds of thousands of patent applications annually and vigorously defends its IP through legal action.

What makes recent statements by tech leaders particularly troubling is their selective approach to IP protection. Many tech giants have built their empires on strategies that could be characterized as "taking the ladder up behind them." After using IP protection to establish market dominance, they advocate for weakening protections that might benefit newer competitors or rights holders in other sectors.

Consider the content industry's struggle with tech platforms over fair compensation. While technology companies have created valuable distribution channels, they've also built trillion-dollar businesses partly by monetizing others' copyrighted material without adequate compensation to creators. The ongoing battles between news publishers and social media platforms over content aggregation represent just one example of this tension.

Moreover, large tech companies frequently engage in practices that smaller innovators consider predatory. "Efficient infringement"—where companies deliberately use patented technologies, calculating that legal costs will deter many small patent holders from pursuing claims—has become a recognized business strategy. For smaller inventors, the cost of defending IP rights against tech giants often makes enforcement prohibitively expensive, effectively nullifying their legal protections.

The tech industry's appropriation of others' intellectual property extends beyond formal infringement. Tech platforms routinely collect user data to train AI systems that generate content and code remarkably similar to copyrighted works. By training on billions of copyrighted works without permission or compensation, AI companies are essentially extracting value from creators' intellectual property while arguing that such uses constitute "fair use" or fall outside existing IP frameworks entirely.

The Consequences of Abandoning IP Protection

Proponents of eliminating IP laws often present idealized visions of unrestricted innovation without acknowledging the practical consequences. Without IP protection, several predictable outcomes would likely emerge:

1. **Investment collapse in high-risk, research-intensive fields:** Industries requiring substantial upfront investment before commercialization—pharmaceuticals, biotechnology, advanced materials, and complex software systems—would see dramatic funding reductions. Why spend billions developing a new treatment when competitors can immediately copy it without contributing to research costs?
2. **Shift to trade secrecy:** Rather than publicly disclosing innovations through the patent system, companies would rely heavily on trade secrets, reducing knowledge sharing that fuels follow-on innovation. The public disclosure requirement of patents—which has created vast repositories of technical knowledge—would disappear, potentially slowing technological progress.
3. **Concentration of creative power:** Without copyright protection, individual creators and smaller studios would struggle to monetize their work, likely leading to further concentration of creative production in large companies that can absorb losses from unauthorized copying and control distribution channels.

4. **Quality degradation:** As revenue streams for creators become less reliable, investment in quality would likely decline across creative industries, potentially flooding markets with lower-quality content while making ambitious, expensive creative projects financially unviable.
5. **Reduced international competitiveness:** Countries maintaining IP protections would likely see innovation migrate from regions that abandoned such protections, creating competitive disadvantages for economies that dismantled their IP systems.

Recent Progress in IP Protection: Restoring Balance

Recent developments in IP law demonstrate that legislators worldwide are recognizing the need to rebalance the system in favor of genuine innovators. In Europe, the Unified Patent Court (UPC) and unitary patent system, which came into effect in 2023, represents the most significant reform to the European patent system in decades. This system creates a single patent right covering multiple EU member states and establishes a specialized court with exclusive jurisdiction for patent litigation.

The UPC dramatically reduces the cost and complexity of patent protection across Europe by eliminating the need for multiple national validation procedures and litigation in different jurisdictions. For inventors and small businesses, this means more affordable access to broad geographic protection and a streamlined enforcement process against infringers operating across multiple countries. The court's specialized judges bring technical expertise to patent cases, potentially leading to more consistent and informed rulings.

In the United States, proposed legislation aims to address longstanding imbalances in the IP system. The Patent Eligibility Restoration Act (PERA) seeks to clarify what inventions qualify for patent protection, potentially reversing restrictive Supreme Court decisions that have made it difficult to patent certain biotechnology and software innovations. The Promoting and Respecting Economically Vital American Innovation Leadership Act (PREVAIL Act) reforms rules and procedures at the Patent Trial and Appeal Board (PTAB) to better secure and advance U.S. technological leadership. The PTAB is the administrative body designed to provide a faster process for adjudicating patent validity than going to federal district court.

Perhaps most significantly, the RESTORE Act Realizing Engineering, Science, and Technology Opportunities by Restoring Exclusive (RESTORE) Patent Rights Act of 2024, is a bipartisan, bicameral bill that would restore the presumption that courts will issue an injunction to stop patent infringers, strengthening protections for U.S. inventors, entrepreneurs, universities, and startups.

The UPC did not just sprout on us out of the blue in 2023. It was decades in the making; first proposed in the 1970s when the European Commission suggested creating a Community Patent and associated court system, it evolved slowly through layers of negotiation—more like cultivating a bonsai tree than building a skyscraper overnight. And the proposed bills above have already been tweaked a zillion times over the years, and they have not been made into law yet. These developments thus represent thoughtful evolution rather than revolution. They maintain the fundamental benefits of IP protection while addressing specific problems that have emerged in the digital age. By making protection more accessible and enforcement more practical for smaller entities, these reforms support precisely the kind of grassroots innovation that critics claim IP laws inhibit.

When tech leaders who have built fortunes through aggressive IP protection suggest eliminating those same protections, we should examine their motivations carefully. The historical evidence remains

compelling: societies with robust intellectual property protection have consistently produced more innovation, cultural output, and economic growth than those without such protections.