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Citation for published version:

Brown, A 2010, 'Limiting the social power of intellectual property rights through human rights and competition'.

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Publisher final version (usually the publisher pdf)

Publisher Rights Statement:

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Limiting the social power of intellectual property rights through human rights and competition

Contextualising intellectual property in innovation
systems perspective

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4 March 2010

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Overview

- IP must be/is the starting point
- Human rights and competition might be more fundamental
- Arguments can be made for human rights and competition to prevail
 - only in rare cases and there is unlikely to be wider policy change
- BUT
 - IP doesn't always reward innovation – even if obtained
 - a greater regard for ongoing competition can lead to more innovation, without backwards looks at IP
 - human rights can fuel CSR, new attitude to funding innovation and sharing it
 - SO THIS IS A REALLY GOOD EVENT!



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IP

- It's there
 - TRIPS
 - is sought
 - pharma, Microsoft/Rambus, new UKIPO guidelines for EST, FMCG
 - small business initiatives
- Confers power to control use of innovation
 - blocking new innovation
 - preventing wider social use
 - essential technologies
- **CAN BE FETTERED – DOES NOT EXIST IN (LEGAL) ISOLATION**



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Competition

- More established – can be made to share
 - US
 - Trinko
 - EU
 - IMS, Microsoft
 - TTBE
- BUT very rare (market, abuse) AND likely need to develop a new product
 - good for innovation, not for social benefit
- Even if it's a standard, movement away from requiring sharing
 - Rambus – even where network effect
- Costly, lack of control
- No global competition law



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Human rights

- MUCH more controversial
 - do they exist, states or individuals, do they attach to IP
- UN Sub-Commission resolutions re TRIPS, WTO DSS looking to human rights, Doha Declaration
- EU – Lisbon, Charter, innovation focus
- *Ashdown, Wind Done Gone, Laugh it Off* - can prevail in courts
 - Cf *Harper & Row, Budweiser*



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DOESN'T Work?

- Large business
- Small business
- BUT
 - NIAC
 - National IP policies
 - US 301
- Funders? Shareholders?



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In the end

- A positive argument can be made for IP
 - a policy solution (new TRIPS) unlikely
 - ACTA!
- If IP starts at the centre of a business model, it will remain there
- Alternative sources of funding, with less IP, can mean more willingness to share
- EGTT/Copenhagen Accord suggests more likely (or possible)
 - Malaria
 - Creative Commons



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A contribution

- IF funders, shareholders, governments, directors stood back from IP
- THEN
 - competition could form part of new willingness to explore new innovation and forms of reward
 - human rights could support equitable sharing
 - without the need for the eternal battle with IP



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- THANK YOU ALL!
- AND TO FUNDERS



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