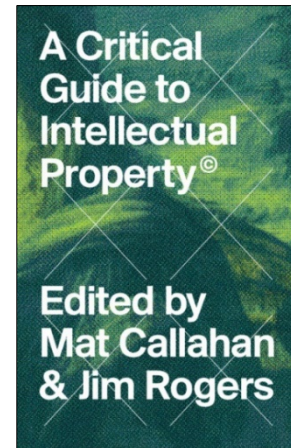


Mat Callahan and Jim Rogers (Eds.), **A Critical Guide to Intellectual Property**, London, UK: Zed Books, 2017, 292 pp., \$25.00 (paperback).

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What is intellectual property (IP), and how does IP law affect creative industries, those working in them, and society more broadly? This edited volume provides a variety of approaches to exploring IP, all from a critical perspective. They are organized into three sections covering historical and philosophical approaches, specific sectors of the economy most affected by IP, and interactions between IP law, international organizations, and policy. Those who are already familiar with IP law and its critiques will likely find some individual contributions, but not the entire volume, valuable. However, for scholars in communication and media studies who are unfamiliar with IP, this book provides a commendable introduction to the concept and its applications and consequences. Unfortunately, the volume is missing a chapter that describes in detail the several alternatives that have been proposed to replace the current IP regime. It is indeed a critical guide, but a bit of construction would be welcome.



After an introduction, **A Critical Guide to Intellectual Property** begins with a chapter by Mat Callahan on his introduction to copyright law and practice as a musician. He argues that U.S. copyright law is presented by its defenders as essential to motivate musicians to create music, and to reward them for their creations—yet in practice, copyright law benefits record companies and a few superstars, while leaving the majority of (nonetheless motivated) musicians without fair compensation. He points to the difficulty—intrinsic to the nature of creativity and art—of using IP rights to reward individuals in proportion to their contribution to an unavoidably collaborative activity.

The first section is devoted to the history, political economy, and philosophy of IP. The chapter by Colin Darch begins by noting a lacuna in scholarship on IP history: Most has been written by legal scholars who are competent in detailing the relatively recent development of IP law but who often overreach when attempting to extend contemporary IP concepts and justifications as far back as ancient Greece. Darch argues that for most of recorded history, the concept of property rights extending to the realm of ideas is simply absent, even in embryonic form—hence clearly not required for incentivizing innovation. Michael Perelman offers a provocative political-economic analysis of IP, pointing out that IP is not radically different from other aspects of economic production in its near-zero marginal cost; the late 19th century also witnessed a dramatic reduction in marginal costs for a range of industrial goods, and like IP today, monopoly was the solution that emerged to avoid ruinous competition. His chapter also covers the history of global IP law harmonization, in which a handful of U.S. corporations succeeded in pressuring governments around the world to enforce their IP rights—that is, monopolies—putting IP into the broader context of global political economy. Concluding this section, Callahan explores the philosophy of IP by rooting it in the possessive individualism of John Locke and others. That is, modern IP can only exist if one can own oneself

(and other people, that is, slaves who alienate their own self-property rights), and by extension, one can own the purely mental products of one's self.

The next section examines specific areas of the economy most affected by IP law. Josef A. Brinckmann's chapter focuses on traditional knowledge (TK), how the contemporary IP regime fails to conserve ecological and medicinal TK, how IP law has been used for cultural appropriation (in its original sense: taking another culture's knowledge and appropriating it as one's own profit-making property), and how underdeveloped countries have been trying to defend themselves within a system designed by (and for) more powerful states and corporations. Caroline B. Ncube's chapter introduces the access to knowledge movement, describes its struggle against copyright laws that deny the majority of the world's population access to educational materials, and offers an alternative tiered system of copyright that would offer freer access to educational works while preserving restrictions on more commercially oriented products. Jim Rogers' chapter examines justifications for copyright in the music industry, countering industry claims that "piracy" poses an existential threat with evidence that record companies have more or less adroitly transitioned into the digital economy with their profitability (and artist-exploiting business model) intact. Finally, Paul McKimmy (with a coda by Bob Jolliffe) details the open source software movement, in which programmers create freely shareable and usable software. The chapter explains why patents are a clumsy fit for software development and may inhibit rather than incentivize innovation through the threat of litigation; it ends with a description of the resistance to the IP regime coming from programmers. It also briefly mentions the economic concept of a "public good" but does not go far in explaining its critical relevance for IP and alternative regimes.

The final section delves into IP law itself and the institutions creating and enforcing IP policy. Debora J. Halbert focuses on the World Intellectual Property Organization (WIPO/OMPI), its history, present, and possible futures. Beginning with a delicious irony—that with its "pirated" sculptures, the very fountain greeting visitors to WIPO's headquarters in Geneva is itself a testament to the limits of the IP approach to incentivizing creativity—the chapter explains WIPO's maximalist approach to IP rights and argues that it should instead be the United Nations' agency tasked with facilitating knowledge transfer from rich to poor countries. Blayne Haggart then dissects IP from legal, philosophical, moral, and rhetorical angles. He starts from the paradox at the heart of IP law: It is meant to protect intellectual products but at the same time to disseminate them widely. The current IP regime errs on the side of protection, preventing dissemination—which may be justifiable if the result is increased innovation and economic progress, but as Haggart reveals, the evidence for IP law's economic effects is remarkably weak. This section concludes with a chapter by Mat Callahan on the piracy metaphor invoked by beneficiaries and supporters of IP law, noting that IP "theft" and "piracy" are fundamentally incommensurable with real-world theft and piracy.

The volume concludes with a summary by the editors of the various contributors' arguments, highlighting those aspects that could contribute to an alternative to the contemporary IP regime. Here, the book's only major shortcoming comes into focus. Readers who had been unfamiliar with IP beforehand have now been introduced to a wealth of arguments against current IP law—yet what could possibly replace it has been given only fragmentary treatment in the preceding chapters. This would have been an ideal location for an argument about the implications of IP meeting all of the characteristics of a public good in the digital age: nonrivalry (one person's "consumption" of digital IP does not prevent anyone else from "consuming"

it), nonexcludability (it is extremely difficult if not impossible to exclude people from “consuming” IP, with peer-to-peer sharing networks, paywall workarounds, etc.), and near-zero marginal cost (producing an additional unit of digital IP—making a copy of an mp3 or an additional visit to a newspaper website—costs nearly nothing). Even in business-friendly orthodox economics, public goods are held to be best provided by government, not private markets. This opens up a wealth of possibilities, like public provision of all digital products from news and software to music and movies. Other, nondigital IP alternatives could also have been described in detail, like governments offering prize money to incentivize drug development or directly contracting with pharmaceutical firms, and in both cases ensuring that the resulting medicines are sold at cost.

Nonetheless, *A Critical Guide to Intellectual Property* offers what it advertises: effective criticism of the current IP regime and its failures. For a *constructive* guide to what might replace contemporary IP law—and better incentivize creativity, disseminate innovations, and fairly distribute the products of art and science—readers will have to look elsewhere.