



# The Pentagon Turns to Intellectual Property to Protect U.S. Military Dominance

Robert Farley | Thursday, April 21, 2016

Intellectual property: It sounds boring, but its protection has become one of the cornerstones of U.S. economic policy. And now, it may have an impact on how the Pentagon thinks about the future of technology.

In recent years, the big push for international intellectual property protection (<http://amzn.to/1n5yuBp>) came about through the concerted action of a group of powerful, well-connected American corporations. These corporations had determined that they could make a great deal of money—or at least stop the loss of a great deal of money—by putting crucial intellectual property protections into international law. Washington has embraced this idea, making intellectual property a central part of every major trade agreement of the past decade.

It wasn't always this way. It's fair to say that the United States has, historically, displayed some inconsistency (<http://amzn.to/1NbpqQ8>) regarding the virtues of intellectual property protection. Going back to the 18th century, the U.S. government established a reasonably robust system for patent protection within the United States. The framers of the Constitution expected this system to help drive innovation, increasing national wealth and power. However, they had little regard for the intellectual property of others: The trade secrets and patents of the British, in particular, were viewed as more than fair game.

Indeed, the early U.S. government helped facilitate the acquisition—theft might be too strong of a word—of intellectual property as a strategy for increasing the industrial growth of the American economy. The U.S. maintained this stance throughout most of the 19th century, with strong intellectual property protection domestically, but a far more relaxed attitude when it came to foreign inventions.

Of course, things change. Since at least the 1970s, the U.S. has ramped up intellectual property protection at home and abroad. In part, this stems from the political power of corporations, Hollywood and the



*An F-35A at Mountain Home Air Force Base to conduct operational testing, Idaho, Feb. 8, 2016 (U.S. Air Force photo by Airman 1st Class Connor J. Marth).*

pharmaceutical industry among others, which hold a disproportionate amount of their value in intellectual property. But in part it has also come about through a bipartisan commitment to the belief that America's advantage lies in the innovativeness of its advanced technology sectors—and that this innovativeness requires protection from foreigners.

In a sense, nothing has changed since the 18th century. Policymakers then believed that the U.S. could increase its competitiveness by stealing from the British, and policymakers today believe that foreign countries can become more competitive by stealing from the United States.

This consensus has yielded impressive results. Since the 2000s, the U.S. has made intellectual property protection a key component of every trade deal it has sealed, both bilateral and multilateral. Washington made important progress on this goal with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), a 1995 accord managed by the World Trade Organization that helped enshrine key intellectual property protections.

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But global trade negotiations have stalled since the Doha Round, so the U.S. has embarked on a piecemeal, but still effective, strategy. At the bilateral level, U.S. negotiators have ensured that virtually every agreement completed in the past 15 years has included a chapter on robust intellectual property protection. On the multilateral side, the U.S. has ensured that the Trans-Pacific Partnership (TPP) and the proposed Transatlantic Trade and Investment Partnership (TTIP) with the European Union include strong intellectual property provisions.

States go along with this American insistence on intellectual property protection for different reasons. Some, especially in Southeast Asia, want a security relationship with the U.S. and are willing to cooperate on other issues to see that happen. Most, however, simply seek greater access to U.S. markets and are willing to trade away the interests of domestic intellectual property pirates in order to get it. In the process, American industry gets a set of tools, including arbitration and enforcement mechanisms, that makes protecting intellectual property part of foreign law. Indeed, agreements like the TPP sometimes strengthen intellectual property protections within the U.S., to the consternation of critics.

But U.S. industry isn't the only constituency concerned with intellectual property protection. Increasingly, protecting intellectual property has become a preoccupation of the Pentagon, which sees its own ways to benefit, particularly in a world of cybersecurity threats and technological rivalries. This is the backdrop behind the Pentagon's declared Third Offset Strategy (<http://nationalinterest.org/feature/preserving-us-military-might-how-make-the-third-offset-11800>), which seeks to preserve U.S. technological dominance in an environment that otherwise facilitates the diffusion of military technology.

Part of that offset strategy includes keeping in place the system of export controls that the U.S. created to ensure that the Soviet Union could not take advantage of advanced Western technology. Just recently, the State Department prevented Lockheed Martin from exporting stealth technology to South Korea, and blocked South Korea from selling fighter aircraft that included American components to Central Asia.

But this system isn't up to the task of dealing with China. The U.S. has extensive commercial and academic contacts with China, meaning that advanced American technology regularly finds its way into Chinese hands—and, indeed, is often assembled in China. Moreover, the digitization of knowledge makes U.S. technology more vulnerable to Chinese espionage. China doesn't need an Adolf Tolkachev (<https://www.cia.gov/news-information/featured-story-archive/2008-featured-story-archive/adolf-tolkachev.html>) to steal advanced military data from the United States.

However, like many other states, China is being dragged into compliance with the larger international intellectual property system. Chinese companies have demanded that the government protect their intellectual property, often from each other, and even China's defense industry has worked on regulatory reform that would increase such protections for Chinese firms. A similar process is happening in Russia, where the government has begun to offer financial assistance for export companies to hire Western law firms to manage their intellectual property.

And so the international system that the U.S. has created to protect its most valuable intellectual property has, slowly but surely, crept its way into the military-industrial complexes of America's most advanced competitors. And while China will never give up on the idea of industrial espionage, the presence of both domestic and international law may slow down the extent to which the People's Liberation Army can take advantage of such information.

Washington's commitment to protecting international property has its drawbacks, though, particularly for poor people in developing countries who depend on pirated pharmaceuticals and other technologies for survival. Local industry in such countries also suffers from restrictions that U.S. companies never faced at a similar stage of development. And the newfound enthusiasm for protection, combined with indignation over piracy, is certainly at odds with how the U.S. has approached these questions historically. But in addition to providing a framework for ensuring economic growth, the American commitment to

intellectual property may also help facilitate Pentagon strategy, keeping the country competitive both economically and militarily.

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