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The Ugly Head of Creativity

At least in theory, IPR exist to stimulate innovation by providing inventors with an incentive to be creative. The practice is more complicated. For example, many individual inventors have traditionally looked to patents to set a seal of approval on their creativity, which is not quite the incentive the law had in mind. With the extension of the scale and scope of the patent over the last two decades, and the implementation of TRIPS, the patent has graduated from being the plaything of cranks to the weapon of preference of multinational industry. Innovation can bring competitive advantage, though large firms have long preferred to discourage the innovation of others than to incur the risks and expense of creating their own. It is for this protective purpose that the patent system has been developed over the last two decades. Ironically, perhaps, the large firms of the creative industries have been particularly active in exploiting IPR to discourage creativity. This paper will look at the means by which they have done this. It will argue that copying is essential to technology transfer in small firms and in the developing world, that technology transfer is necessary for creativity, and that the current strategy of the creative industries to deter copying works to deter creativity.

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