Check for updates

Philosophy Compass

WILEY

ARTICLE OPEN ACCESS

Philosophical Perspectives on Intellectual Property Law

Andrea L. Baldini

School of Arts, Peking University, Beijing, China

Correspondence: Andrea L. Baldini (andrea.baldini@fulbrightmail.org)

Received: 21 January 2026 | **Revised:** 17 September 2026 | **Accepted:** 12 October 2026

Keywords: authorship | copyright | generative AI | intellectual property | IP skepticism | moral rights | ontology of works

ABSTRACT

Intellectual property (IP) law shapes how knowledge, culture, and innovation are created, shared, and valued, yet philosophical reflection on it has fallen behind its rapid development. Generative AI has made the gap visible: it opens policy vacuums that cannot be filled until the concepts beneath them are clarified. Rather than a historical overview, this article offers a systematic reconstruction organized around three questions that any IP regime must answer about itself. Why is the restriction IP imposes justified? Who may claim it? And what, exactly, does it protect? These are the questions of value, authorship, and ontology, and they are minimal: no regime can be stated without answering all three. I begin with value, distinguishing optimistic strategies that justify IP's liberty-restricting privileges—consequentialist, deontological, and, more recently, virtue-based—from global and local skeptical positions, including communitarian reframings that contest the terms of the question. I then turn to authorship, and to the pressure that collective and machine production place on the traditional individualistic and human-centered assumptions of copyright. Finally, I discuss ontology, comparing descriptive type-based models with revisionary accounts that ground IP in concrete artifacts.

1 | Introduction

We are living in a period of profound technological transformation. The rapid rise of generative AI has challenged long-held assumptions in a variety of fields, including intellectual property (IP) law. Large language models (LLMs) such as ChatGPT have pushed the boundaries of what constitutes creation, authorship, and fair use. What was once thought to be a specialized field of jurisprudential regulations and procedural minutiae has resurfaced as a source of heated debate over fundamental issues.

Such discussions highlight a fact that the technical style of legal practice has obscured: IP law is based on, and constantly negotiates, philosophical assumptions. Questions about what constitutes a work, what an author is, and why certain forms of expression merit protection although limiting cultural circulation, cannot be answered through legal doctrine alone. They rely on contested understandings of agency, originality, and the nature of cultural artifacts.

Despite the rich conceptual terrain that IP law provides, contemporary philosophers have largely ignored it. Legal scholars, economists, and cultural theorists have done most of the recent work on its foundations. This scenario has produced at least two negative outcomes. First, discussions frequently lack a systematic orientation, focusing on one or more theoretical aspects of IP and ignoring others that could provide more illuminating insights or simply deserve attention (Wilson 2010). Second, debates frequently take place in disciplinary silos, preventing the development of a more robust and practically effective understanding of IP.

My larger goal here, beyond offering a reasoned overview of recent philosophical and philosophically oriented literature on

This is an open access article under the terms of the Creative Commons Attribution License, which permits use, distribution and reproduction in any medium, provided the original work is properly cited.

© 2026 The Author(s). *Philosophy Compass* published by John Wiley & Sons Ltd.

IP, is to counteract these two tendencies by arguing that sustained philosophical engagement is necessary to develop more coherent, equitable, and future-proof IP frameworks. First, I seek to foster inter-, cross-, and intra-disciplinary dialogue—not only to promote exchange across philosophy, law, economics, and cultural theory, but also to bring philosophical analysis to bear on policymaking, litigation strategies, and public debate. Second, I aim to identify the questions that any robust philosophical account of IP must answer.

What helps us identify the most pressing of these questions is the phenomenon I began with, and which has driven the current resurgence of public interest in IP: AI. In Moor's (1985) terms, AI has given us new capabilities for which no settled policy exists—a policy vacuum—which cannot be filled until an underlying "conceptual muddle" (266) is cleared. The vacuum is new; the muddle is not. AI showed the limitations of our concepts of use, authorship, and the protected work.

I propose to formulate these vacuums as three questions that any IP regime must answer about itself. Why is the restriction IP imposes justified? Who may claim it? And what, exactly, does it protect? These are the questions of value, authorship, and ontology, and they are minimal in a strict sense: no regime can be stated without answering all three, whatever else it may also need to settle.

Previous accounts have proceeded historically, rehearsing the standard consequentialist, deontological, and skeptical positions (Drahos 2016; Hettinger 1989; Hughes 1988; Merges 2011; A. D. Moore and Himma 2022). Organizing the field by question instead brings the current vacuums into view. The essay takes the three in turn: value in Section 2, authorship in Section 3, ontology in Section 4.

2 | Value

Extensionally, IP refers to several legal regimes, chiefly copyright, patents, trademarks, and trade secrets. Copyright governs original expressive works; patents protect novel and nonobvious inventions; trademarks secure distinctive signs that identify commercial origin; and trade secrets protect the economic value of confidential information (Miller et al. 2023). Their details differ, but they function alike: each limits the circulation, reproduction, or use of ideas and informational goods. IP, as Drahos (2016, 7) puts it, establishes "liberty-intruding privileges of a special kind"—temporary monopolies over what others may do with particular types of information.

Among the many philosophical issues raised by IP, the most immediate is the question of value: what, if anything, justifies these liberty-intruding privileges? Hettinger (1989, 35) states the tension succinctly. By restricting the acquisition, use, and expression of ideas, IP directly contradicts the creative and communicative freedom that Mill (1859, Chapter 2) held essential to individual self-development and to the advancement of knowledge. That is the conflict any account must address, and it has organized the field since.

Two qualifications are in order. First, freedom is not what justifies IP: it is the value whose limitation demands justification. I am not claiming, then, that freedom is the only value that matters here. Historically, there has been genuine pluralism about the justifications, and this section surveys it. More recently, non-Western and communitarian frameworks have entered the debate, more often to contest the terms of the question than to answer it—unsurprisingly, because traditions that do not take individual entitlement as basic can limit or reframe IP but hardly found it. Second, an epistemic question runs through all of them—under what conditions knowledge spreads—which each justification weighs differently against other considerations.

Philosophical approaches to this question can be divided into two categories: optimists and skeptics. Optimists believe that there are defensible solutions for reconciling IP with the freedoms it restricts, whereas skeptics doubt that such a reconciliation is possible. Optimistic approaches divide into consequentialist, deontological, and virtue-based strategies, the last of which the AI debate has brought to the fore after long being crowded out by the other two; skeptics can be classified as global or local. The subsections that follow look at each of these positions in turn.

2.1 | Optimism

The first version of optimism I examine is consequentialism. This approach justifies IP-imposed limitations on creative and communicative freedom by claiming that such restrictions produce beneficial outcomes. The utilitarian strand of consequentialism has long been the dominant justification for IP, particularly in Anglo-American legal systems (Lemley 2015; Mackaay 1990). For utilitarians, contemporary IP regimes are understood as incentive-based mechanisms: granting authors and inventors temporary exclusive rights is viewed as a necessary condition for ensuring the production of socially valuable works and innovations.

Without mechanisms that restrict the short-term use of their works, creators may be less inclined to dedicate time, resources, and expertise to producing additional IP. These could be immediately replicated by free riders who incur none of the initial costs and investments. Limited monopolies, such as copyrights, patents, trademarks, and trade secrets, are employed to produce an optimal level of creative output, thereby enhancing social welfare. This approach balances long-term well-being objectives with immediate utility maximization. In this sense, utilitarianism offers a clear and compelling justification for the constraints of IP protection on freedom.

A. D. Moore (2018) proposes a second consequentialist approach: a prudential, nonutilitarian rationale based on the logic of the prisoner's dilemma. Two creators each do best by copying the other without being copied in return, but if both copy, neither can recoup costs, and the incentive to create again disappears. Refraining from copying is therefore the second-best outcome, and the one prudence recommends.

IP, on this account, is justified not by maximizing welfare, happiness, or social utility—the marks of utilitarianism—but by protecting each creator against the worst case. The account nonetheless yields the familiar consequentialist benefits,

17479991, 2026, 5, Downloaded from https://compass.onlinelibrary.wiley.com/doi/10.1111/phc3.70142 by Peking University, Wiley Online Library on [22/10/2026]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

because creators who are secure against copying can recoup their costs and invest again.

Deontological approaches differ significantly from consequentialist ones in that they assess the restriction IP imposes by referring to principles and rights rather than to empirical evidence. Recently, an interesting debate has erupted over the legitimacy of nonconsequentialism in IP. Lemley (2015) contends that deontological justifications for IP constitute "faith-based IP." He claims that such views are grounded in untestable commitments that are resistant to empirical evidence and thus fall outside the scope of serious scholarly debate. Merges (2017) responds that this criticism is rhetorically exaggerated and philosophically misguided, defending the legitimacy of nonutilitarian reasoning and insisting—via a pluralist, Rawlsian framework—that multiple foundational approaches can coexist within IP theory.

Compulsory licensing for life-saving drugs, for example, may provide situations in which deontological commitments to save lives trump or balance utilitarian considerations of IP protection (Bonadio and Baldini 2020). The same case returns in Section 2.2 from the opposite direction: for critics working in a communitarian register, compulsory licensing is less a solution than a symptom, an exception that confirms the rule of exclusive ownership.

The personality-based theory is a long-standing deontological approach to the question of value in IP. According to this viewpoint, the results of one's intellectual endeavors are extensions of oneself and thus legitimately belong to the creator. Hegel is credited with the first systematic formulation: individuals have moral claims to specific "features of personality" including their mental "endowments, science, art" (1821/2000, 56). When these inner capacities are externalized, they become legal property. In more modern IP terms, once ideas are embodied in a tangible medium, they create works that are, in some ways, fused with the creator's personality—compound entities whose identity extends beyond their mere physical substrate and derives from their constitutive connection to the author (Hegel 1821/2000, 57; Kohler 1969/1914).

Although personality-based approaches are rarely discussed in contemporary philosophical debates about IP, they remain central to one important subset of IP rights: the moral rights field (Gover 2018; Simon 2025). These noneconomic rights protect the author's reputation and the integrity of the work by requiring proper attribution and prohibiting derogatory changes, even after economic rights have been sold. Contentious legal disputes have revolved around moral rights. Serra (1990) unsuccessfully appealed to such rights to protest the mistreatment and removal of *Tilted Arc*. The landmark 5Pointz decision, which awarded aerosol artists over $6 million after the building owner destroyed their works, also reflects legal recognition of artists' sui generis personal connections to their creations (Bonadio 2019).

Natural-right theories are a second variety of nonconsequentialism. Such theories accept that people have a natural right to own what they create. The version developed by Locke (1690/1982, Chapter 5) is historically the most important, and though some have questioned it (Shiffrin 2001), the standard interpretation runs as follows. Individuals own their bodies and, by extension, their labor, whereas the natural world is initially held in common; they acquire ownership of common resources by mixing their labor with them. Physical labor grounds ownership of material objects; intellectual labor ownership of ideas. The appropriation is permissible only if it does not worsen the situation of others, a limitation commonly called the "enough and as good condition" (Hughes 1988, 297).

Neo-Lockean perspectives broaden and defend these claims, often departing from the labor-desert approach. A. D. Moore (2012) restates Locke's condition in Pareto terms: rather than requiring that appropriations leave enough and as good for others, he treats the proviso as a constraint on worsening their position, so that an appropriation is legitimate if it leaves no one worse off than they would have been without it.

Hick (2017) offers a neo-Lockean justification that abandons labor-mixing but keeps the natural-rights frame. Labor alone cannot ground ownership, because skilled forgers would then acquire rights for their mischief. What grounds it is creative authorship: by creating "a type" (117)—a structured arrangement of letters, colors, or sounds—authors bring into the world something they legitimately own.

A third strategy, until recently marginal, has been brought to the fore by the AI debate. Originally developed for biotechnology IP (Opderbeck 2007), it justifies protection by appeal to the proper end of the institution—for copyright, its "historic and proper end" of advancing human culture and understanding (Opderbeck 2023, 1021). The argument is eudaimonistic rather than consequentialist or deontological—it appeals to what copyright is for, not to incentives or to desert. It also yields a direct answer to the question of training data: because AIs are not human, training them is not among copyright's historic ends, and developers should license what they use.

2.2 | Skepticism

Skeptical approaches to IP are frequently dismissed as marginal or simply parasitic on optimistic theories, and are treated as sources of criticism rather than positions worthy of independent examination. Skepticism is frequently met with the implication that "if you don't support [IP] rights, you're a philistine who doesn't understand" (Adler 2009, 264–265) the value of ingenuity and innovation. But this is unwarranted: skeptical positions require far more serious philosophical consideration.

Two recent developments appear to challenge prima facie the broadly optimistic narrative. First, IP frequently protects corporate interests over individual creators (Drahos 2016, ix) and contributes to rising inequality (Young 2020, ix). Second, AI technologies have been largely developed disregarding copyright constraints (Al-Busaidi et al. 2024). For some, licensing training data is economically unfeasible and would stifle innovation (Andreessen Horowitz 2023). Taken together, these facts paint a far more ambiguous picture of IP than optimistic accounts typically acknowledge.

Skeptics can be broadly divided into global skeptics, who reject IP as such, and local skeptics, who challenge its legitimacy only

17479991, 2026, 5, Downloaded from https://compass.onlinelibrary.wiley.com/doi/10.1111/phc3.70142 by Peking University, Wiley Online Library on [22/10/2026]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

in specific domains or under particular conditions. Both forms pose distinct but complementary challenges to the optimistic claim that the restriction IP imposes can be justified.

Boldrin and Levine (2008) developed what is arguably the most influential and radical form of contemporary global skepticism. Their position is explicitly consequentialist and broadly utilitarian, offering a critique of IP from a pro-market, capitalist perspective. This is significant because it shows that skepticism toward IP is not limited to those who criticize the current economic system. According to Boldrin and Levine, IP rights are not only unnecessary but also actively harmful to innovation.

They focus on consumer welfare and aggregate productivity, refuting the Schumpeterian claim that monopoly rents are necessary to innovation (Boldrin and Levine 2008, Chapter 7). Competition, first-mover advantages, and the accumulation of "knowledge capital" (Boldrin and Levine 2021, 776) drive innovation more effectively than IP regimes, which impose transaction costs and encourage rent-seeking.

Boldrin and Levine (2021) build on this critique by examining the COVID-19 pandemic. They show that patent protections did not allow for the rapid scaling of vaccine production, exposing a further structural flaw in the IP system: the privatization of life-saving technologies developed primarily through public funding. This raises not only efficiency concerns but also distributive justice issues, as private firms are given monopoly control over public goods that taxpayers have already paid for.

Among local skeptics, Young (2020) offers a philosophically sophisticated proposal for narrowing the scope of IP, and in particular, of copyright. Although his argument also begins with consequentialist concerns, its core is deontological. Young explicitly challenges natural-right traditions and advances what can be described as Millian IP skepticism.

Young's (2020) view revolves around the "Millian Principle of Fair Use," which is based on Mill's Harm Principle: no harm, no foul. According to him, artists create pattern-types, which give them "the capacity to create objects that are tokens" (51). Unauthorized copying harms artists because it significantly limits their ability to make a living by selling and exploiting their works. In a market economy, such harm provides a moral justification for copyright protection.

Crucially, this same reasoning implies that copyright duration should be limited to 20 years or the death of the author (76). Extended terms do not benefit artists, but rather heirs or corporate assignees. Young (2020) goes on to suggest an even more radical limitation: copyright should not be transferred to individuals or corporations because the moral concept of harm cannot apply to entities that did not create the work (66).

A different kind of local skepticism targets the framing rather than the rules. Ncube (2017) reimagines copyright around distributive justice and *ubuntu*, a metanorm of humaneness and fairness; Kolawole and Ncube (2025) extend the approach to drug patents, faulting compulsory licenses and human rights exceptions for conceding that exclusionary ownership is the rule and public access the exception. They also stress that communitarian commitments are not intrinsically non-Western, a caution that parallels Yu's (2015) warning about the loose invocation of Confucianism to explain Asian attitudes to IP.[1]

Two further versions of local skepticism come from contemporary art practice and from postcolonial thought. Adler (2009) provides a unique critique by attacking the legitimacy of moral rights. She contends that the "right of integrity"—an artist's ability to prevent the modification or destruction of their work—is based on an outdated, Romantic-era notion of the "solo genius." In the context of contemporary art, she claims that this legal framework undermines artistic vitality by stifling the very transformative processes that allow art to evolve (as seen in Rauschenberg or the Chapman brothers). Such rights should be abandoned.

Vats (2020), for her part, argues that IP is racialized rather than a neutral incentive system. She contends that IP law is governed by "racial scripts" that define the "intellectual property citizen" in ways that systematically favor White, Euro-American masculinity. She demonstrates how these scripts serve as a rhetoric of exclusion, with people of color's creative practices frequently labeled as unoriginal or piratical. Her goal is to deeply restructure the IP system in order to democratize the norm-making process. Both Adler (2009) and Vats (2020) ground their criticisms in an aspect that is frequently overlooked in theoretical debates: authorship. In the following section, I turn to just that.

3 | Authorship

IP law, particularly copyright, grounds legal privileges in a significant relationship between creators and their works. Who, then, counts or should count as an author? Surprisingly, this question has received little sustained attention in IP theory, and has generally been understood functionally rather than ontologically. What occupies the authorial role can in principle be an entity of many kinds—an individual, a collective, a machine, or, on some accounts, no one at all. What matters is the relationship in which a candidate must stand to the object produced for the law to credit them and hold them responsible.

Both IP legislation and much philosophical reflection presuppose a model of authorship in which authors are individuals who create works independently using their own creativity. The image of the author as a solitary creator has frequently been criticized as a romantic myth (Stillinger 1991). Although its dominance has obscured the "messy" (Hick 2017, 84) reality of creative production, it is probably an exaggeration to say that the "truly 'solitary' author is a fiction" (70). What is undeniable, however, is that a significant and growing proportion of creative works are the result of collaborative effort.

Collective authorship has grown in importance in copyright law as technology has enabled new forms of collaboration that challenge traditional joint-authorship doctrines; perhaps for this reason alone, it deserves more philosophical attention. Digital infrastructures enable large-scale, decentralized projects like Wikipedia, where hundreds of articles are created every day by loosely connected contributors who have never met.

17479991, 2026, 5, Downloaded from https://compass.onlinelibrary.wiley.com/doi/10.1111/phc3.70142 by Peking University, Wiley Online Library on [22/10/2026]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

Contributions can range from writing entire entries to editing, proofreading, and enforcing community guidelines. These examples raise an important conceptual question: which, if any, of these contributors qualify as authors, and do some collaborative works become effectively "author-less" (Livingston 2009, 80)?

Biron and Cooper (2016) argue that these questions could benefit from a systematic engagement with analytic philosophy of art. And aestheticians have begun to address this issue, albeit in ways that are not explicitly related to IP concerns. For instance, Bacharach and Tollefsen (2010) offer an interesting proposal. They argue that genuine coauthorship results from a shared commitment to creating a work "as a body." This shared commitment supports distributed labor and delegated authority in large-scale or hierarchical collaborations, but excludes peripheral contributors who are not parties to the relevant creative commitment.

There is a significant convergence between Bacharach and Tollefsen's (2010) joint-authorship framework and Simone's (2019) analysis, which is likely the most comprehensive discussion of joint authorship in modern legal studies. Simone (2019) proposes a reformative, contextual, and inclusive approach to the joint-authorship test, which has been critical in legal practice. Under the conventional framework, participants are considered joint authors if their contributions are (i) not distinct, (ii) part of a common design, and (iii) significant in the relevant sense.

Simone (2019), like Bacharach and Tollefsen (2010), strives for a balanced interpretation of these principles. She claims that overly stringent methods for shared authorship limit the number of acknowledged authors, allowing economic exploitation and incorrectly equating authorship with ownership. She suggests assessing the significance of a contribution on the basis of the type of work involved—such as Wikipedia entries, scientific research, or film production—and adhering to a de minimis criterion for authorial acknowledgment.

Simone's (2019) hopes for reengineering copyright around more inclusive, nonindividualistic models of authorship may be overstated. Even with her expanded definition of authorship, many traditional and vernacular creative practices—such as those found among Indigenous communities and ethnic minorities (Coombe 1998), as well as in nonmainstream forms like street art and graffiti (Baldini 2019), and rap (Vaidhyanathan 2001)—continue to be underserved. These are fundamentally appropriative and share-based cultures, and it is frequently not only difficult but conceptually misguided to ask who first introduced a specific feature or expression. In such circumstances, Livingston's (2009) suggestion that some works be better understood as author-less is not unreasonable. Indeed, it may point to a more appropriate framework for recognizing collective cultural practices and motivating stronger cultural rights regimes outside of copyright's individualistic architecture (Coombe 2005).

The emergence of generative AI raises a further, and increasingly urgent, concern about authorship in relation to IP. Current copyright regimes rely on a human-centered concept of authorship (Bonadio and Lucchi 2025). Because jurisdictions typically require that a work be created by a human subject making creative choices, algorithmic outputs lack a clear authorial anchor. This shows that authorship is not a mere technicality but a threshold condition for IP protection.

J. G. Moore (2025) examines this disruption by exploring what he calls *the antinomy of artificial art*, which denotes the contradiction between the ideas that AI-generated works constitute art, that all art requires an artist, and that AI art lacks an identifiable creator. He asserts that there are no viable candidates among prompters, programmers, and the AI itself who fulfill the criteria for authorship according to current standards. In his view, the antinomy can be alleviated through a deliberate, socially motivated reform of our artistic and legal institutions. In this sense, "clarifying or changing the application of copyright in light of their generative capacities will ultimately involve revising our conception of art" (J. G. Moore and Frankel 2024, 265).

Ajani (2020) had already taken what J. G. Moore (2025) calls the conceptual-revision route. He dismisses the effort to maintain traditional authorship, contending that modern law is founded on a metaphysics of individual human agency that no longer corresponds to algorithmic production. He advocates a shift in perspective regarding AI, suggesting we abandon the view of it as merely a tool, in light of the domains of robot law and theories of *digital personhood*. Ajani proposes a reformative framework that would enable the acknowledgment of AI systems as autonomous agents possessing a defined, restricted legal status within the copyright process.

In contrast, Cross (2025) advocates for an alternative conceptual shift through what he terms the *exploration paradigm*. He contends that we are presently ensnared in a *production paradigm* that restrictively perceives AI as either a tool or a collaborator employed to generate a product. Cross (2025) posits that, akin to conceptual and participatory performance art, the genuine source of artistic agency in AI art resides in the interactive dialogue between the human and the "algorithm's latent space" (542). From this perspective, the results of human–machine interactions are secondary to the documentation of a human artist's inquiry into the machine. Consequently, Cross (2025) proposes an interesting idea, aligning with some recent legal advancements: the prompt itself—as the framework of this interaction—may serve as a locus of copyrightable human creativity.

These perspectives show that authorship, which defines the subject the law rewards and regulates, is a pillar of IP theory. Two of the three questions are now in view; the third concerns the nature of the protected thing itself.

4 | Ontology

After value and authorship, the third conceptual foundation of IP is ontology. Where Section 3 asked who occupies the authorial role, this one turns to the object: what kinds of entities does IP law consider to be protectable, and what exactly are intellectual works and inventions? Addressing this question reveals the metaphysical assumptions embedded in contemporary doctrine, as well as the extent to which legal practice is dependent on contested philosophical commitments. Any law presupposes something about the nature of what it regulates,

17479991, 2026, 5, Downloaded from https://compass.onlinelibrary.wiley.com/doi/10.1111/phc3.70142 by Peking University, Wiley Online Library on [22/10/2026]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

and in IP, whose objects are not physical, that presupposition is unusually exposed.

On Strawson's (1959/1990) influential distinction, ontological inquiry can be descriptive or revisionary. Descriptive ontology seeks to articulate the metaphysical commitments implicit in our everyday and institutional practices: in our case, it investigates how we conceptualize the objects of IP law. In contrast, revisionary ontology evaluates those commitments and proposes alternative conceptual frameworks when existing ones appear ambiguous, inconsistent, or normatively problematic.

Generally, dominant forms of descriptivism look at the type–token distinction as the best way to capture the ontology currently grounding IP law (Wilson 2010; Young 2020). Whereas tangible property concerns ownership of physical tokens—particular objects located in space and time—IP concerns ownership of abstract types: works, inventions, and designs that can be multiply instantiated. On this view, the book *The Great Gatsby* is not identical with any particular printed copy but is an abstract work type instantiated by many physical tokens.

Wilson (2010) defends this account against alternative metaphysics. The relation between a song and its recordings is not one of part to whole, because each performance realizes the work entirely; nor is it that of a property to its instances, because the patent for a coffee machine is a blueprint for building machines rather than a feature machines share; nor are types defined by their members, because destroying or printing copies leaves a novel's identity untouched. Types are entities characterized by satisfaction conditions rather than by the tokens that happen to exist. This gives IP ontological stability: the work survives the destruction of every copy.

Wilson (2010) does not ignore the complications. Types are nonrivalrous and nondegradable: one person's singing of a song neither prevents others from performing it nor diminishes its availability. If intellectual goods are not naturally scarce, exclusive rights cannot be justified by the logic of physical property alone; they need further normative support. The legal heavy lifting—term length, scope of rights, permissible exceptions—is done instead by "our commitments to equality and the need to provide sufficient incentives to creators to ensure an adequate supply of intellectual property goods" (461).

Revisionary ontologies typically begin with the issues raised by Wilson (2010) in order to call into question the notion that IP protects abstract objects at all. According to Gamrot (2025), the nonrivalrous and nondegradable nature of types creates not just a challenge to be addressed normatively, but rather a nonstarter. Types are abstract objects, so it is unclear how they can be created, used, manipulated, or worked on. Rather than addressing these issues directly, which realists and nominalists have yet to settle after centuries of raging debate, he opts for what he calls a *modest ontology*. This remains neutral with respect to the existence of types and claims that what innovators and artists create are material objects: artworks, innovative devices, and visual identifiers of products (Gamrot 2025, sec. 8). In this sense, Gamrot (2025) redefines IP rights as "rights to tokens, not types" (Gamrot 2025, sec. 15).

Peukert (2021) pushes this critical approach toward its legal implications. He argues that types are "institutional facts" (Searle 2010): social constructs formed through speech acts and collective recognition rather than self-sufficient entities. In this view, dominant ontologies of IP are nothing more than fictions developed in the eighteenth century to facilitate market transactions.

His alternative is a legal realist metaphysics of IP focused on the "Master Artifact" (Peukert 2021, 52). This, as in Gamrot (2025), is a "brute fact" or prototype (a token), such as an original manuscript or a registered patent description, that a person creates. Legal protection, therefore, does not grant ownership of an idea, but rather the exclusive right to control the reproduction and use of this Master Artifact. Infringements occur when a third party creates a "Secondary Artifact" (Peukert 2021, 57), namely, a copy or imitation that is sufficiently similar to the Master Artifact. This shift in perspective grounds IP law in observable reality, reducing the comparison between the original and the alleged infringement to evidence rather than metaphysical speculation.

5 | Conclusion

IP has always moved with technology, from the printing press to mechanical reproduction. What is new is the scale: where almost everything on a screen is already a copy, IP has become an everyday infrastructure rather than a specialized legal niche.

Although IP law is currently undergoing rapid and continuous reform, philosophical engagement has lagged. However, IP rests on at least three highly contested assumptions, concerning value, authorship, and the nature of cultural objects. The purpose of this article was not to rehash the familiar history of IP theory, but rather to reorganize current debates around three conceptual fault lines—value, authorship, and ontology—that increasingly determine the coherence and legitimacy of IP regimes. If IP is to remain defensible in an age of digital abundance, mass collaboration, and algorithmic production, philosophical work along these three axes is no longer optional, but rather required for responsible legal reform.

Funding

The work was supported by Peking University (Grant 8206100863).

Conflicts of Interest

The author declares no conflicts of interest.

Data Availability Statement

Data sharing not applicable to this article as no datasets were generated or analyzed during the current study.

Endnotes

[1] Zhang (2020) argues that Confucian commitments are, on the contrary, congenial to IP. The contrast invites us to treat such appeals as arguments rather than as cultural facts.

17479991, 2026, 5, Downloaded from https://compass.onlinelibrary.wiley.com/doi/10.1111/phc3.70142 by Peking University, Wiley Online Library on [22/10/2026]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

References

Adler, A. 2009. "Against Moral Rights." *California Law Review* 97, no. 1: 263–300. https://doi.org/10.15779/Z380X3H.

Ajani, G. 2020. "Contemporary Artificial Art and the Law: Searching for an Author." *Brill Research Perspectives in Art and Law* 3, no. 4: 1–84. https://doi.org/10.1163/24684309-12340009.

Al-Busaidi, A. S., R. Raman, L. Hughes, et al. 2024. "Redefining Boundaries in Innovation and Knowledge Domains: Investigating the Impact of Generative Artificial Intelligence on Copyright and Intellectual Property Rights." *Journal of Innovation & Knowledge* 9, no. 4: 100630. https://doi.org/10.1016/j.jik.2024.100630.

Andreessen Horowitz. 2023. *Comments of a16z on the Notice of Inquiry on Artificial Intelligence & Copyright (Docket No. 2023-6)*. U.S. Copyright Office. https://s3.documentcloud.org/documents/24168677/colc-2023-0006-9057_attachment_1.pdf.

Bacharach, S., and D. Tollefsen. 2010. "'We' Did It: From Mere Contributors to Coauthors." *Journal of Aesthetics and Art Criticism* 68, no. 1: 23–32. https://doi.org/10.1111/j.1540-6245.2009.01389.x.

Baldini, A. L. 2019. "Copyright Skepticism and Street Art: A Contrasting Opinion." In *Copyright in Street Art and Graffiti: A Country-by-Country Legal Analysis*, edited by E. Bonadio, 315–331. Cambridge University Press.

Biron, L., and E. Cooper. 2016. "Authorship, Aesthetics and the Artworld: Reforming Copyright's Joint Authorship Doctrine." *Law and Philosophy* 35, no. 1: 55–85. https://doi.org/10.1007/s10982-015-9244-y.

Boldrin, M., and D. K. Levine. 2008. *Against Intellectual Monopoly*. Cambridge University Press.

Boldrin, M., and D. K. Levine. 2021. "Reforming Patent Law: The Case of COVID-19." *Cato Journal* 41, no. 3: 773–785. https://doi.org/10.36009/CJ.41.3.15.

Bonadio, E. 2019. "Conservation of Street Art, Moral Right of Integrity and a Maze of Conflicting Interests." In *Copyright in Street Art and Graffiti—A Country-by-Country Legal Analysis*, edited by E. Bonadio, 71–80. Cambridge University Press.

Bonadio, E., and A. L. Baldini. 2020. "COVID-19, Patents and the Never-Ending Tension Between Proprietary Rights and the Protection of Public Health." *European Journal of Risk Regulation* 11, no. 2: 390–395. https://doi.org/10.1017/err.2020.24.

Bonadio, E., and N. Lucchi. 2025. "Artificial Intelligence and Intellectual Property: Mapping Doctrinal Tensions in Copyright, Patent, and Trademark Laws." *Social Science Research Network*: (SSRN Scholarly Paper No. 5945214). https://doi.org/10.2139/ssrn.5945214.

Coombe, R. J. 1998. *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law*. Duke University Press.

Coombe, R. J. 2005. "Cultural Rights and Intellectual Property Debates." *Human Rights Dialogue: An International Forum for Debating Human Rights* 2, no. 12: 34–36. https://ssrn.com/abstract=2463920.

Cross, A. 2025. "Tool, Collaborator, or Participant: AI and Artistic Agency." *British Journal of Aesthetics* 65, no. 4: 535–551. https://doi.org/10.1093/aesthj/ayae055.

Drahos, P. 2016. *A Philosophy of Intellectual Property*. Routledge. https://doi.org/10.4324/9781315263786.

Gamrot, W. 2025. "A Critique of Moore's Intellectual Property Theory." *Journal of Value Inquiry*. https://doi.org/10.1007/s10790-025-10041-0.

Gover, K. E. 2018. *Art and Authority: Moral Rights and Meaning in Contemporary Visual Art*. Oxford University Press.

Hegel, G. W. F. 2000. *Philosophy of Right*. Translated by S. W. Dyde. Batoche Books. (Original Work Published 1821).

Hettinger, E. C. 1989. "Justifying Intellectual Property." *Philosophy & Public Affairs* 18, no. 1: 31–52. https://www.jstor.org/stable/2265190.

Hick, D. H. 2017. *Artistic License: The Philosophical Problems of Copyright and Appropriation*. University of Chicago Press.

Hughes, J. 1988. "The Philosophy of Intellectual Property." *Georgetown Law Journal* 77, no. 2: 287–366.

Kohler, J. 1969. *Philosophy of Law*. Translated by A. Albrecht. Augustus M. Kelley: (Original Work Published 1914).

Kolawole, O., and C. B. Ncube. 2025. "Rethinking Ownership, Power and Policy in Drug Patents: The Case for an Ubuntu-Infused Approach." *Journal of African Law* 69, no. 1: 21–34. https://doi.org/10.1017/S0021855324000263.

Lemley, M. A. 2015. "Faith-Based Intellectual Property." *UCLA Law Review* 62, no. 5: 1328–1346.

Livingston, P. 2009. *Art and Intention: A Philosophical Study* (Reprinted). Clarendon Press.

Locke, J. 1982. *Second Treatise of Government: An Essay Concerning the True Original, Extent and End of Civil Government*. Harlan Davidson. (Original work published 1690).

Mackaay, E. 1990. "Economic Incentives in Markets for Information and Innovation." *Harvard Journal of Law & Public Policy* 13, no. 3: 867–909.

Merges, R. P. 2011. *Justifying Intellectual Property*. Harvard University Press.

Merges, R. P. 2017. "Against Utilitarian Fundamentalism." *St. John's Law Review* 90, no. 3: 681–709.

Mill, J. S. 1859. *On Liberty*. Bobbs-Merrill.

Miller, A. R., M. H. Davis, and D. Neacsu. 2023. *Intellectual Property, Patents, Trademarks, and Copyright in a Nutshell*. 7th ed. West Academic Publishing.

Moor, J. H. 1985. "What Is Computer Ethics?" *Metaphilosophy* 16, no. 4: 266–275. https://doi.org/10.1111/j.1467-9973.1985.tb00173.x.

Moore, A. D. 2018. "Intellectual Property and the Prisoner's Dilemma: A Game Theory Justification of Copyrights, Patents, and Trade Secrets." *Fordham Intellectual Property, Media and Entertainment Law Journal* 28, no. 4: 831–869. https://doi.org/10.2139/ssrn.2825252.

Moore, A. D. 2012. "A Lockean Theory of Intellectual Property Revisited." *San Diego Law Review* 49, no. 4: 1069–1103.

Moore, A. D., and K. Himma. 2022. "Intellectual Property." In The Stanford Encyclopedia of Philosophy *(Fall 2022)*, edited by E. N. Zalta and U. Nodelman. Metaphysics Research Lab, Stanford University. https://plato.stanford.edu/archives/fall2022/entries/intellectual-property/.

Moore, J. G. 2025. "The Antinomy of Artificial Art." *Philosophical Studies*. https://doi.org/10.1007/s11098-025-02430-9.

Moore, J. G., and S. J. Frankel. 2024. "Creativity, Credit, and Copyright in the Age of Artificial Art." *Journal of Aesthetics and Art Criticism* 82, no. 3: 265–277. https://doi.org/10.1093/jaac/kpae034.

Ncube, C. B. 2017. "Calibrating Copyright for Creators and Consumers: Promoting Distributive Justice and Ubuntu." In *What if We Could Reimagine Copyright?*, edited by R. Giblin and K. Weatherall, 253–280. ANU Press. https://doi.org/10.22459/WIWCRC.01.2017.08.

Opderbeck, D. W. 2007. "A Virtue-Centered Approach to the Biotechnology Commons (or, the Virtuous Penguin)." *Maine Law Review* 59, no. 2: 315–338.

Opderbeck, D. W. 2023. "Copyright in AI Training Data: A Human-Centered Approach." *Oklahoma Law Review* 76, no. 4: 951–1023.

Peukert, A. 2021. *A Critique of the Ontology of Intellectual Property Law*. Translated by G. Mertens. Cambridge University Press. https://doi.org/10.1017/9781108653329.

17479991, 2026, 5, Downloaded from https://compass.onlinelibrary.wiley.com/doi/10.1111/phc3.70142 by Peking University, Wiley Online Library on [22/10/2026]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License

Searle, J. 2010. *Making the Social World: The Structure of Human Civilization*. Oxford University Press. https://doi.org/10.1093/acprof:osobl/9780195396171.001.0001.

Serra, R. 1990. "Art and Censorship." *Nova Law Review* 14, no. 2: 323–332.

Shiffrin, S. V. 2001. "Lockean Arguments for Private Intellectual Property." In *New Essays in the Legal and Political Theory of Property*, edited by S. R. Munzer, 138–167. Cambridge University Press.

Simon, D. A. 2025. "Copyright's Missing Personality." *Houston Law Review* 62, no. 5: 993–1054.

Simone, D. 2019. *Copyright and Collective Authorship: Locating the Authors of Collaborative Work*. Cambridge University Press. https://doi.org/10.1017/9781108186070.

Stillinger, J. 1991. *Multiple Authorship and the Myth of Solitary genius*. Oxford University Press.

Strawson, P. F. 1990. *Individuals*. Taylor & Francis Group: (Original Work Published 1959).

Vaidhyanathan, S. 2001. *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity*. New York University Press.

Vats, A. 2020. *The Color of Creatorship: Intellectual Property, Race, and the Making of Americans*. Stanford University Press.

Wilson, J. 2010. "Ontology and the Regulation of Intellectual Property." *Monist* 93, no. 3: 450–463. https://doi.org/10.5840/monist201093326.

Young, J. O. 2020. *Radically Rethinking Copyright in the Arts: A Philosophical Approach*. Routledge. https://doi.org/10.4324/9781003058298.

Yu, P. K. 2015. "Intellectual Property and Confucianism." In *Diversity in Intellectual Property*, edited by I. Calboli and S. Ragavan, 247–270. Cambridge University Press. https://doi.org/10.1017/CBO9781107588479.014.

Zhang, N. 2020. *A Confucian Analysis on the Evolution of Chinese Patent Law System*. Springer. https://doi.org/10.1007/978-981-13-9027-2.

17479991, 2026, 5, Downloaded from https://compass.onlinelibrary.wiley.com/doi/10.1111/phc3.70142 by Peking University, Wiley Online Library on [22/10/2026]. See the Terms and Conditions (https://onlinelibrary.wiley.com/terms-and-conditions) on Wiley Online Library for rules of use; OA articles are governed by the applicable Creative Commons License