

Adelphi Charter

FAQs

Summary:

The excessive use of intellectual property laws is working against the public interest.

Therefore, any changes to the IP legal framework should be held to a public interest test.

The government should do more to promote open, non-monopolistic mechanisms for sharing intellectual property.

What is the Adelphi Charter?

The Adelphi Charter (full name: the RSA Adelphi Charter on Creativity, Innovation and Intellectual Property) sets out global principles for intellectual property laws.

What does it say and do?

It says the current system of copyright and patents is out of touch with reality.

It calls upon governments to use a 'public interest' test when considering new laws.

It says that when rights-holders' interests are in conflict with the public interest the public interest must take precedence.

What is unique about the Charter?

It is the first global statement to say creativity and innovation are more important than rights-holder's private interests.

Who wrote it and who is behind it?

It was written by an international commission of eminent artists, scientists, inventors, lawyers, economists, policy-makers and business experts.

The Director is John Howkins, a leader in creativity, media and intellectual property.

The research coordinator is Dr Jaime Stapleton from the RSA.

What is the RSA's interest in the Charter?

The Royal Society of Arts, founded in 1754, has always been committed to innovation. It can claim to be the world's first think-tank on intellectual property. From 1765 until the mid 19th century, it offered prizes to inventors on condition they did not take out patents, and was heavily involved in drafting reforms to patent law between the 1840s and 1880s. It has always argued vigorously that an uninhibited flow of knowledge is essential for innovation. It supports the Adelphi Charter as part of its commitment to encouraging enterprise – a key part of its 21st century manifesto.

Why is it called the Adelphi Charter?

'Adelphi' is a Greek word based on an Aramaic word meaning brother or brethren. The Adam brothers, the 18th century architects of the RSA's headquarters, used it to describe their buildings - and themselves. It is also the story of a play by Terence, born in Carthage, which was first performed in Athens in 160 BC. The RSA Adelphi Charter commission chose the word because it captures the spirit of collaboration that underpins most creative thinking.

What is intellectual property?

Intellectual property is the term given to copyright, patents, trademarks and other ways of protecting creative and innovative outputs and products. It works by giving exclusive rights, or monopolies, usually for a limited period of time (known as the 'term'). It provides a global standard for identifying and rewarding the people and companies who create and invest in new ideas.

Why do we need a Charter?

The current laws do not reflect modern ways of thinking and working. They are out of touch with the public's demand to get access to information and knowledge and, in many cases, to be creative themselves. Just as the traditional, Victorian ways of teaching had to change when mass education arrived so, now everyone wants to express their own creativity, IP laws have to change.

IP's monopolies rights must always be balanced against public needs for access to knowledge. Recently the balance has been lost and private rights have become too strong.

What has triggered the crisis?

The belief that creativity and innovation need IP to flourish.

The facts show that all civilisations have produced great art and science without high levels of intellectual property protection. This has held true in China, India, the Middle East, Europe and the Americas.

Europe and the USA developed and industrialised in the 18th century when their patent laws were very weak. More recently, the inventors of the World Wide Web, as well as the scientists who invented the global positioning system (GPS) and mapped the human genome, deliberately decided not to use IP because they believed their ideas would flourish better if they were accessible to all. The claim that creativity depends on copyright and patents is untrue.

What is the basic problem?

The extension of private rights threatens basic freedoms such as access to ideas, knowledge and culture and economic efficiency.

What are the main headline issues?

Here are some examples. More information is given in Mapping the Issues <www.adelphicharter.org/news.asp>.

1. Human genes. Should it be permissible to patent a human gene?
2. Drugs. What is the right balance between expensive patented drugs and cheap generic drugs? Today, hundreds of thousands of people are dying of AIDS annually because they cannot afford patented drugs.
3. Development. The West wants to impose its own laws worldwide. Developing countries want laws that suit their own state of cultural, social and economic development.
4. Music and the Internet. In order to protect some high-value material the new laws cut back on the public's access to all material.
5. Research. Academics are finding it difficult and expensive to access research results. What rules should govern access to knowledge? Should R&D be privatised and restricted?
6. Computer Software. Should companies be allowed to patent computer software? The US says yes, Europe says no.
7. Facts. Facts have always been 'free' (ie, couldn't be copyrighted or patented). But in 1996 the EU passed a unique law to protect lists of facts (databases). Other countries (US included) think this is morally wrong and economically stupid. The EU law affects all facts and, for example, prevents Europeans getting access to lists their own publicly-funded postal addresses and weather data.
8. Plants. Many Western companies get patents for the genetic properties of plants, herbs and spices. In most cases, the local people where these crops were growing either believed they were owned by the local community or were in the public domain (ie, belonged to nobody). Vandana Shiva calls this 'bio-piracy'.

You seem to be in favour of weaker IP rights?

We are not absolutist. But we believe the trend towards stricter laws and longer terms needs checking.

The proponents of always stronger IP have three arguments. These are given below, followed by our own views.

Argument 1: Owning one's ideas is a natural right and should have no limits. People understandably feel possessive about their ideas. But they should not therefore have the right to prevent others from having access to them.

Argument 2: IP is an incentive to creativity. Creativity has flourished in many places and at many times when IP was weak or non-existent (the great scientific discoveries in China and Arabia; the great art of the Renaissance; Europe's Industrial Revolution; the World Wide Web, for starters). It is ridiculous to claim, as some do, that the US's recent extensions of copyright terms from 50 to 70 years after the author's death is an incentive for people to write more, or better, books. Artists have always created; nobody works harder just because their work will be protected after their death. The American entertainment industry uses this argument to extend the term of copyright retrospectively after someone is long dead. This is absurd.

Argument 3: IP enables creators to be acknowledged and rewarded. It provides a basis for legal contracts between creators and investors, distributors, etc, and prevents theft and fraud. This argument is valid. This is IP's great achievement. But no private contract should be allowed to impede and over-ride public interests. We need to evaluate its economic efficiency and social impact and, if the private gain outweighs the social loss, call a halt.

But piracy and counterfeiting are increasing. Surely, we need stronger laws and better enforcement?

We make a distinction between commercial large-scale copying particularly of DVDs (theft) and incidental and even accidental on-line copying at home for private non-commercial use.

We oppose the large-scale commercial theft of copyright material and believe civil and where appropriate criminal sanctions may need to be applied in the most serious cases.

The situation with personal copying, even on a large scale for non-commercial uses, is more complicated. The music and film industries have faced this before with the introduction of audio and video cassettes. They said this would be catastrophic; in fact, it became a major source of profits. Currently, they are

suffering from private online copying and counterfeit DVDs. We do not have convincing evidence that the industry is suffering fundamental damage or that the public has lost its desire to pay for music. We believe the answer lies in the provision of attractive legal services (eg, iTunes, PlayLouder). The laws do need adjusting to take account of the digital environment but not, we urge, at the cost of cutting back on public and consumer rights unnecessarily. Several new US and British laws designed to prevent illegal copying have the effect of also preventing legal 'fair use' at home.

On counterfeit goods, we take a similar view: we oppose theft but are realistic about the effects. We believe a lot of data is suspect. For example, the industry claim that the fact that a brand-label good normally retailing in shops at \$50 is available on the street for \$5 is evidence of a lost sale of the \$50 version. We do not accept this. It is likely that some people will only ever buy the \$5 version while others will trade upwards and replace the cheap, bad copy with the real thing.

We support the recent statements by film and music company executives that the best way to solve this problem is to provide consumers with what they want in a legal way.

Theft is not a big issue in the vast majority of industries. Of the core creative industries (art, architecture, advertising, crafts, etc), the only ones affected are those which depend on digital systems.

Do governments support the Charter?

Most governments support it in principle but not in practice. They see IP as a means of supporting their own companies rather than the public interest.

We believe many governments are failing in their duty to make sure IP laws take account of the public interest

Will the Charter cover all IP?

It will focus on the major two legal systems, copyright and patents, but its principles apply to all IP

Who will read it?

National governments, national patent and copyright offices, artists and scientists, industry, NGOs and the media.

It will also be addressed to the United Nations. This is because the UN (1) has ultimate authority over international IP treaties through its specialised agencies the World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO), and (2) provides the main global forum for discussions of human rights, development, trade, education, etc.

The Charter is short and written in ordinary, non-legal language. It will be a political manifesto rather than a legal document or academic report. It will be written in English and translated into other languages.

What happens next?

We are:

- Pushing a public interest and development agenda within the UN
- Persuading governments to promote the public interest
- Working with companies to develop user-friendly licences
- Working with consumer groups to educate the public about IP

Does the UK have a special role to play?

The UK has an important role to play. This is partly historical, since it was the leader in developing copyright in the 18th century and partly because of its successful creative industries.

We are talking with the UK government about

- Introducing a more stringent public interest test in new legislation
- Ensuring public and consumer representatives equal industry representatives on all relevant advisory bodies
- Not introducing new legislation without independent research
- Promoting the RSA Adelphi charter principles in the UK and worldwide.