

History of Laws and Regulations Affecting the Transfer of Intellectual Property

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Introduction

The concept that *intellectual property*—the products of the mind—had a value as property arose during the framing of the U. S. Constitution. That concept grew out of extensive thought and correspondence between James Madison, the primary architect of the Constitution, and Thomas Jefferson.

Madison recognized that the nature of an individual piece of intellectual property is such that it could be useful to all people and yet could be owned by one person. That ownership, if exercised under the generic term *property* in the Fifth Amendment, could amount to indefinite monopolization of that property by the owner. On the other hand, such property, being of value to all, was susceptible of being appropriated in the public interest without just compensation to the individual who was the inventor or author. In Madison's words, "...the (creative) few will be unnecessarily sacrificed to the many."

To solve this dilemma, a compromise was struck under which intellectual property was to be owned for only a limited time during which the creator had the right to exclude others. That compromise is stated in Article I, Section 8, Clause 8, of the Constitution in the following language: "The Congress shall have Power ... To promote the Progress of Science and useful arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

This constitutional provision forms the basis for the protection of intellectual property in the United States.