

# The RSA and Intellectual Property

The history of the Royal Society of Arts and intellectual property legislation

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## Encouraging Creativity and Learning

The encouragement of learning and creativity has been the fundamental aim of the *Royal Society of Arts (RSA)* since its inception over 250 years ago. The Society has always sought innovative ways to do this.

The question today is the same as it was two and a half centuries ago:

*How do you encourage and reward creative activity in such a way that the benefits, in terms of products and knowledge, are made as widely available as possible? How do you ensure that the encouragement you offer also encourages and enables others to access and build on that knowledge and culture?*

Concern with these questions has meant that, since its first meetings in 1754, the Society has been involved with questions of 'intellectual property'. *The Adelphi Charter on Creativity, Innovation and Intellectual Property* continues this long history.

## Historical Context

The original name of the Society was *Society for the encouragement of Arts, Manufactures and Commerce*. However, an alternative name quickly emerged - the "*Premium Society*". Until the mid 19th century, the Society offered cash premiums to inventors and artists as a means of encouraging new and progressive works. This means of supporting innovation often meant hostility towards patents. The reasons for the conflict are complex.

The Society was formed as the systems of ownership and control that characterised feudal societies - control of land resources - were giving way to an economy based on industrial production and foreign trade. The fundamental aim of the Society was straightforward: to encourage technological and social improvements necessary for that

progress by fostering the spread of knowledge to the greatest number of people as possible.

The Enlightenment values of openness, intellectual enquiry and social improvement informed the Society's opposition to all forms of trade monopoly and also to the secrecy that frequently characterised the traditional craft guilds.

The original 'mission' is stated in a document from 1754. The aim of the Society is:

“the encouragement of Arts, Manufactures and Commerce, in Great Britain, by bestowing Rewards, from Time to Time, for such Productions, Inventions, or Improvements, as shall tend to the Employing of the Poor, to the Increase of Trade, and to the Riches and Honour of this Kingdom, by the Promoting Industry and Emulation”.

The words *emulation* and *improvement* are vital. Today's fevered discussion of intellectual property and piracy entirely obscures the fact that creativity and innovation have always been founded on emulating, or copying, what already exists and then attempting to improve upon it. The 'creative cycle' has always been dependent on the ability to *access* and *recombine* elements drawn from common knowledge into new scientific and cultural products.

Access to knowledge was then, as it is now, the key to all social, technological and economic improvements.

### **General Opposition to Patent Monopolies**

The debate about the utility of patents has a long history. Opposition to patents by trade organisations was not uncommon in the 18th and 19th centuries. A patent is a temporary monopoly granted for the public good. But monopolies have usually been regarded as economically damaging. They restrict competition and keep prices high, but more importantly, they restrict the flow of knowledge vital to social improvement. For this reason, governments have always sought to limit their scope.

The Society's objection to patents stemmed from such basic objections, but also a host of more complex issues.

### **The Premium Lists**

The broad aim of the Society was not entirely dissimilar to that of the patent system. However, its remit was far more broad and inclusive. The Society published '*Lists*' of areas over which it would offer a cash '*Premium*' for innovations and inventions. The *Lists*, and details of the *Premiums* granted, were published as widely as possible. For example, copies were made available for viewing at post offices.

From 1765 onwards, the “Rules and Orders” of the Society governing the Premiums stated very clearly the following:

“No person will be admitted a candidate for any premium offered by the Society who has obtained a patent for the exclusive right of making or performing anything for which such premium is offered’.

The reasons for Society’s prohibition on patents are complex.

Firstly, as the first *List* of 1754 demonstrates, the scope of the Society’s mission was broad. Premiums were offered on: the Polite Arts (painting, sculpture etc.), Agriculture, Manufactures, Mechanics, Chemistry and Colonies & Trade.

Patents were not appropriate to solving many specific issues and areas of concern laid out in the lists for each area. Diverse improvements, such as tree planting and the preservation of historic buildings were encouraged. These had nothing to do with the realm of patents. In 1754, the Society discussed ways of encouraging the production of madder and cobalt for the domestic dyeing industry. Increasing the acreage of madder, and finding new sources of cobalt, was well outside the scope of the patent system.

Even today, many vital questions of innovation and social need are outside the system of intellectual property. Yet, too often policy makers confuse intellectual property with creativity and innovation. Similarly, today, critics have pointed out that patents have failed to encourage investment in treatments for the diseases prevalent in developing countries. As the Society’s *Lists* demonstrate, the limitations of the patent system have long been known.

A further aspect of the *Lists* is the way they promoted a general awareness of technological and social problems requiring solutions. Often the awareness was spread beyond the profession or industry in which the problem had been identified. Today, we are more aware of the need for cross-disciplinary approaches to problem solving. The Society’s *Lists* were one of the first instances of such an approach.

### **The Advantages of the Premium System**

Scepticism about what the patent system could achieve, and antipathy to restrictive practices created by monopoly, were central to opposition to patents with the Society (and in other 18th and 19th century organisations).

The Society’s *Premium* system offered a simple advantage - public access to the innovation or invention was *immediate*. The applicant would present his work before a specialist committee convened to assess its worth. If it were deemed to be a useful advance, details would be published (until the mid 19th century in the *Transactions* of the Society and later in its *Journal*). A repository of models was also held at the Society

where the public could view the technologies and gain insights into how further improvements could be made.

In contrast, details of a patented invention remained the monopoly of the patentee for 14 years. In addition, in the 18th century, *disclosure* sometimes came only after a fight; in one famous case, some thirty years after the expiry of the patent.

The Premium system had considerable advantages:

- Immediate disclosure meant that *price competition* on the product kicked in quickly, lowering costs to the consumer.
- *Follow-on innovations* building on the knowledge or understanding rewarded by the Premium could also be activated immediately and with no reference to the original inventor.
- The Premium Lists *set questions*. They created a *general awareness* of social and technological problems that needed solving. The Lists themselves inspired innovative thinking across disciplines. The patent system, then as now, has no remit to set out and prioritise questions of social and economic need.
- The *application costs* for a Premium were comparable, or lower, than for those seeking a patent.
- The *costs of litigation* disappeared. Successful patented inventions were always the ones most likely to be infringed and the costs of defending the patent against many infringers were often prohibitive (as they still are). In contrast, inventions receiving premiums did not need defending. The very point was to spread the knowledge as widely and quickly as possible.
- The Society's approval acted as a quality mark in the market place. The *marketing value* of association with the Society was often as important, or more important, than the cash Premium.

### **Specific Opposition to Patents on Innovations Rewarded by Premiums**

In addition to the advantages of the Society's Premiums, a general antipathy against patent monopoly, and more specific conflicts with the patent system, emerged in the late 18th century.

The awareness of problems needing solutions resulted not only in applications for Premiums but also in some cases in applications for patents.

In 1761, a number of patents were taken out relating to problems highlighted in *Premium List*. The monopolies thus created undermined the Society's general aim of fostering widespread access to knowledge. The patents also meant that applicants for Premiums in those areas ran the risk of infringing a patent. Slightly later, there were cases where successful Premium applicants also sought patent protection.

In a letter of 1758, the Society stated what would soon become its formal position on patents

“it is contrary to the Institution and Design of the Society to encourage the obtaining of Patents”.

By 1763, a minute of a meeting suggested that a note be fixed at the end of the Premium Books, stating that:

“That no Person will be admitted a Candidate for any Premium offered by this Society, who has obtained a Patent for the exclusive Right of making or performing any Thing for which such a Premium is offered.”

It is important to recognise that, while many members of the Society opposed patents, others were patent holders. The *specific prohibition* against patents in the Society’s ‘Rules and Orders’ was primarily motivated by practical concerns. In the mid 18th century, registered patents barely reached double figures each year. That, and the breadth of the Society’s remit, meant that, in practice, there were few conflicts with the patent system.

However, as the patent system grew in the early 19th century, the prohibition increasingly placed many new innovations outside the Society’s remit. As a result, during the mid 19th century, the system was gradually abandoned in favour of other means of securing the Society’s aims.

### **The Move to Reforming Intellectual Property Policy**

Rather than attempting to supplement patent law with the Premium System, the Society increasingly turned its attention to influencing government policy.

The Society was granted a Royal Charter in 1847 and, though the Premium system was not formally abandoned, the prohibition on patented items was relaxed, and the importance of Premiums gradually diminished.

This did not mean that hostility to patents by some members abated, or that the Society’s involvement with intellectual property ended. There was a very wide debate about the value of patents in the 19<sup>th</sup> century, and abolition of the system was debated.

The Society, and many of its members, were heavily involved in the debate. The *Patent Law Amendment Act* of 1852 went some way towards meeting the historic demands of the Society. The Act provided full public access to all information on new patents. The new Patent Office also ensured that details of all previous patents were distributed freely to public libraries to further ensure wide access to public knowledge.

The new access granted by the Act, together with the new public interest in museums, made the Society’s own collection of model inventions increasingly redundant and they were dispersed to public collections in the 1850s.

As part of the refocusing of its activities the Society encouraged exhibitions of new industrial inventions and, in 1852, established the Society's *Journal* and *Public Lecture Programme*, which gradually took the place of the *Lists* as the primary means of securing awareness of social and technological problems and developments.

The Society's role with respect to intellectual property continued later in the century. In 1858, it began a campaign to secure copyright protection for painters and photographs that culminated in the *Fine Arts Copyright Act* of 1862. The purpose of the Act was to ensure that just rewards for creative activity went to the creator or artist. Until that point the primary financial benefit went to those in a position to publish images, rather than to the creators of images. (The exception being engravers who had secured protection for their creative investment in 1735.)

In the 1870s, the Society led opposition to the government's proposed reforms of patents: a process that culminated in the Society drafting its own patent reform bill and having it presented to parliament in 1881. The government bill introduced to parliament in 1883 incorporated most of the Society's suggestions.