

Genetic Copyright: An Alternative Method for Protecting and Using Essential Public Knowledge Assets?

research question: Can copyright be considered as a possible and additional form of intellectual property protection for engineered DNA sequences?

research objective: The objective of the investigation is to explore the possible legal arguments in support of, or against, the copyright protection for engineered DNA sequences.

methodology applied: The methodological approach applied is characterized as empirical-analytic: it involves the analysis of the texts produced by government and regulatory institutions as well as by judicial authorities comparing the effectiveness and efficiency of different interventions. In particular, the research will adopt the following methodologies: doctrinal research, interdisciplinary legal research, comparative method.

The paper expanded on whether copyright may be flexible enough to protect synthetically engineered life forms or organisms. While this might not be an impossible task, it is certainly one that poses significant legal and regulatory problems. In the past few decades, copyright law and policy has changed significantly and the boundaries of the copyright system have been expanded to cover non-traditional subject matters that were not considered to be eligible for protection before.

In particular, the paper focuses on copyright as a possible and additional form of intellectual property protection for engineered DNA sequences. Recent progresses in synthetic biology and bioengineering triggered a resurgence of the debate on the so called “genetic copyright”.

Considering the evolving conception of copyright subject matter, the current narrowed patent-eligible protection over living organisms and the advance of emerging technosciences like synthetic biology, the article looks with a renewed interest to the debate on copyright law as an additional potential form of protection for engineered biological creations. The contribution of this investigation is to reveal that copyright seems not only flexible enough to handle contemporary technologies producing living organisms, but also socially preferable to patent protection for accessing and using essential public knowledge assets in the life sciences. The availability of copyright in this field may in fact produce the socially desirable outcome of guaranteeing areas of freedom for the users of biotechnological products and processes, such as scientists, researchers and other professionals in the life sciences. It may achieve this balance by replacing the strict liability regime of patent law with the more flexible fair use defence of copyright regimes and the fostering of a feasible open source regime. In particular, an optimized genetic copyright regime might support open source approaches to biotechnology increasing the amount of material in the public domain.

References:

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