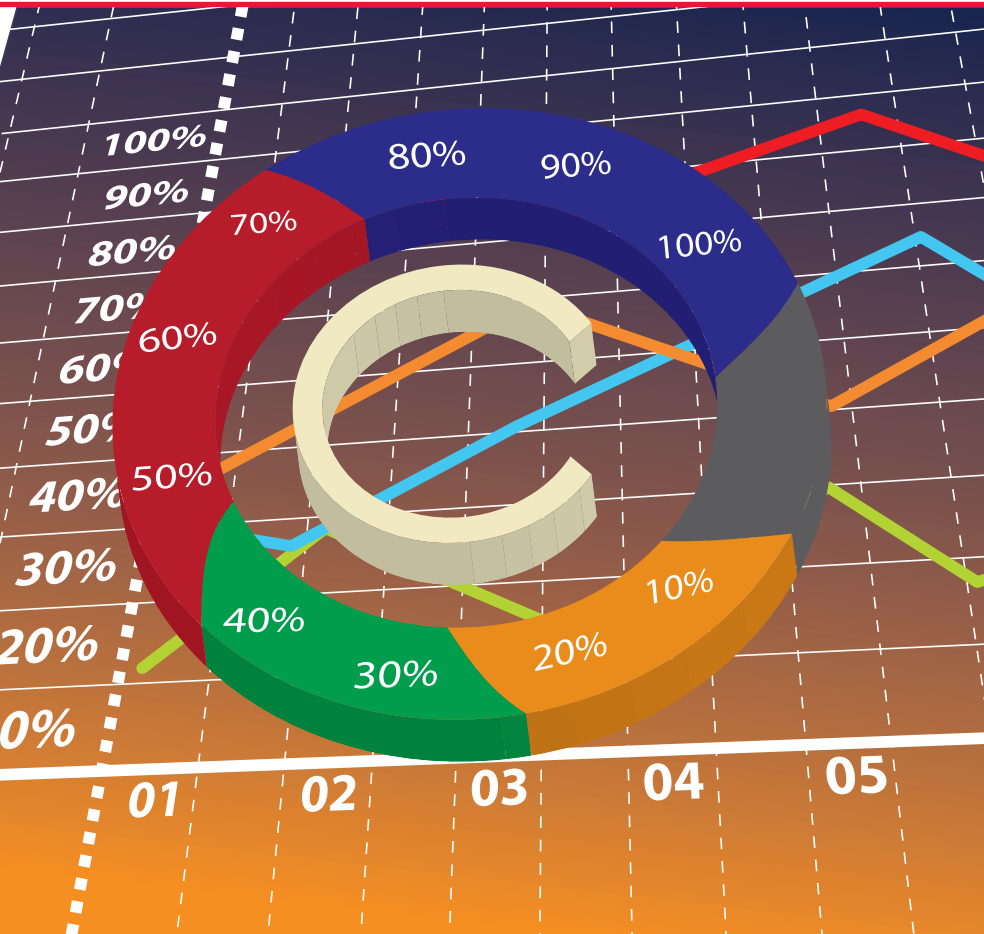


# UNIVERSITY of **HOUSTON** | LAW CENTER

Institute for Intellectual Property & Information Law



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### ***THE FOURTEENTH ANNUAL SPRING LECTURE***

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### **Copyright and Creative Incentives: What We Know (And Don't)**

**CHRISTOPHER JON SPRIGMAN**

Professor of Law  
New York University School of Law

Commentator:  
Bob McAughan  
Sutton McAughan Deaver PLLC

**THURSDAY, MARCH 30, 2017**

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**Chris Sprigman** teaches intellectual property law, antitrust law, competition policy, and comparative constitutional law at New York University School of Law. His scholarship focuses on how legal rules affect innovation and the deployment of new technologies. He is the author of two books and of numerous articles, both in law reviews and in the popular press.

Sprigman received his B.A. with honors from the University of Pennsylvania in 1988. He attended the University of Chicago Law School, serving as a comment editor of the *University of Chicago Law Review* and graduating with honors in 1993. Following graduation, Sprigman clerked for Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit, and for Justice Lourens H. W. Ackermann of the Constitutional Court of South Africa. Sprigman also taught at the law school of the University of the Witwatersrand, in Johannesburg, South Africa.

From 1999 to 2001, Sprigman served as appellate counsel in the Antitrust Division of the U.S. Department of Justice, where he worked on *U.S. v. Microsoft*, among other matters. Sprigman then joined the Washington, D.C., office of King & Spalding, where he was elected a partner. In 2003, he left law practice to become a Residential Fellow at the Center for Internet and Society at Stanford Law School. He joined the University of Virginia faculty in 2005, and moved from UVA to NYU in 2013.

Selected publications include: *THE KNOCKOFF ECONOMY: HOW IMITATION SPARKS INNOVATION* (Oxford University Press, 2012) (with Kal Raustiala); *Innovation Heuristics: Experiments on Sequential Creativity in Intellectual Property*, 92 *IND. L.J.* 1251 (2016) (with Christopher Buccafusco & Stefan Bechtold); *Experimental Tests of Intellectual Property Laws' Creative Thresholds*, 92 *TEX. L. REV.* 1921 (2014) (with Christopher Buccafusco, Zachary C. Burns & Jeanne C. Fromer); *Berne's Vanishing Ban on Formalities*, 28 *BERKELEY TECH. L.J.* 1565 (2013); and *What's a Name Worth?: Experimental Tests of the Value of Attribution in Intellectual Property*, 93 *B.U. L. REV.* 1389 (2013) (with Buccafusco & Burns).

### **Copyright and Creative Incentives: What We Know (And Don't)**

The grounding justification for copyright law is that the grant of exclusive rights in artistic and literary works will incentivize authors to invest in new creativity. The economic theory undergirding this justification is straightforward. By preventing competition from copyists, copyright law helps to ensure that the return (if any) generated by a particular act of artistic or literary creativity will flow to the author, and not to a copyist. The improved prospect of gain is expected to motivate additional creative effort.

This is an entirely sensible story, but is it right? On that foundational question we have mostly surmise, and little that qualifies as evidence. We have a small number of event studies designed to investigate copyright incentives. We also have a growing number of qualitative studies of copyright incentives in the branch of IP scholarship that some refer to as Intellectual Production Without Intellectual Property (“IP Without IP”) and others as the “Negative Space” scholarship. And we have a very small number of lab experiments investigating copyright incentives.

Together, these scattered bits of empirical evidence suggest that the relationship between copyright and creativity is ... complicated. We see data suggesting that copyright incentivizes some sorts of creativity sometimes. Other data suggests that in some settings copyright incentives may do little or nothing to encourage creative output. The as-yet incomplete account that is emerging calls to mind what Professor Fritz Machlup said about patents in a 1958 report to the United States Congress:

“If we did not have a patent system, it would be irresponsible on the basis of our present knowledge of its economic consequences, to recommend instituting one. But since we have had a patent system for a long time, it would be irresponsible on the basis of our present knowledge, to recommend abolishing it . . .”

This talk will highlight representative examples of the existing empirical scholarship on the relationship between copyright and creative incentives, assess how well the existing scholarship informs us regarding the supposed link between the two, and sketch out some of the directions future research should take to improve the state of our knowledge.

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