

### Identifying Information

Name:	Abdel-khalik, Jasmine
School:	UMKC School of Law

### Paper Information

Title:	Trademarks, Captive Speakers, and the First Amendment
Abstract:	<p>The Supreme Court has ruled that the prohibition on disparaging trademarks is an unconstitutional restriction on free speech. One can debate the merits of the Supreme Court decision. But the question currently pending is whether to likewise find the scandalous trademark prohibition unconstitutional. The portion that relates to obscene material would not be included in First Amendment protection. But a portion of scandalous marks is beyond the obscenity standard. This paper intends to explore the unique positioning of trademarks as creating captive speakers and how that implicates the First Amendment analysis. In another work, I explored how consumers, forced to use a trademark to refer to the associated goods or services, become captive speakers. Unlike the Cohen “captive audiences,” these captive speakers cannot simply turn away, but rather must either use the trademark or have tremendous difficulty accessing/using the underlying goods or services. In light of its unique positioning, this paper intends to explore parallels between the USPTO’s regulation of trademark registrations and the FCC regulation in <i>FCC v. Pacifica</i>. Trademarks are accessible and utilized by nearly every one to engage in commerce and are perhaps even more uniquely pervasive and intrusive into the home than the broadcast of indecent language.</p>

**Identifying Information**

Name:	Abrams, David
School:	University of Pennsylvania

**Paper Information**

Title:	Rules of Thumb for the Use of Patent Citation Data
Abstract:	Patent Citations have been the go-to proxy for the value of innovation for over 25 years, used in hundreds of papers. Recent availability of novel datasets has shed new light on some of the complexities and limitations of this frequently-used proxy. There is evidence that the value-citation relationship may in some cases be non-monotonic. Recent work has also shown that the relationship may be field-dependent, with notable differences between technological and pharmaceutical patents. There are differences in the relationship depending on the type of value of interest. While these new findings complicate the use of patent citation data, they need not eliminate its use. This paper reviews the recent empirical literature on the topic, extends it, and provides rules of thumb for its use in future analyses.

### Identifying Information

Name:	Anderson, Jonas
School:	American University

### Paper Information

Title:	The Value of "Worthless" Patents
Abstract:	<p>Patents covering surgical techniques are statutorily unenforceable against the most likely would-be infringers of those patents—surgeons and hospitals. Essentially, surgical procedures are eligible for patenting, but any such patent is largely worthless, because the patent cannot be used to obtain damages or an injunction against the infringer. Such patents grant rights without any remedy for infringement. Despite this, patentees regularly file for surgical method patents and the U.S. Patent &amp; Trademark Office often grants such requests. Why would anyone go to the expense (upwards of \$20,000) and hassle (two years, on average) of patenting a surgical technique if that patent grants a mere “right without a remedy?” The answer, this Article proposes, is surprisingly simple, yet flies in the face of patent orthodoxy: some inventors patent (not invent, but patent) because the patent gives certain non-monetary rewards. In the surgical field, these non-monetary rewards include increased prestige among other surgeons, the recognition as a pioneer in a particular field of surgery, the attention of large surgical device manufacturers, and gaining a reputation as an innovator. These non-monetary rewards provide a better explanation for the continued patenting of surgical methods than do traditional exclusive rights notions. This insight has two potentially powerful implications for patent law generally. First, building on the user innovation literature, this Article proposes that not only are some users ideal knowledge creators, but they also disseminate that knowledge via the patent system in ways that have not been appreciated before. Second, some inventors may approach the patent system with a completely different set of costs and benefits than those previously recognized. To these inventors, the primary benefit of the patent system is the public disclosure that is a prerequisite to patenting. This contradicts almost all contemporary patent theories, which consider disclosure the primary cost inventors are trying to avoid. As such, this Article provides a novel understanding of the motivation to patent as a means of knowledge dissemination, not exclusive rights. This novel understanding should encourage us to reassess various patent law doctrines including operability and enablement.</p>

### Identifying Information

Name:	Asay, Clark
School:	BYU Law School

### Paper Information

Title:	Artificial Stupidity
Abstract:	<p>Artificial intelligence (AI) is one of the most important technological developments of what some call the "Fourth Industrial Revolution." Given its ubiquity and importance, legal scholars, including IP law scholars, have begun to assess a number of legal implications relating to AI. These include whether the products of AI systems deserve IP protections, whether AI can help solve problems at the USPTO, among others. In this Article, I assess whether US innovation policy, as reflected in its IP laws, sufficiently incentivizes AI innovation. I argue that patents are a poor fit for many AI systems and certain types of AI developers. This reality may both underincentivize AI innovation and result in AI innovators relying on trade secrecy more frequently than is ideal. This reliance on trade secrecy may be particularly true for poorly capitalized parties. This reality, in turn, is likely to result in increasing vertical integration in important AI industries. That growing vertical integration, I argue, may then stymie competition and efficiency in AI development as well as compound many of the problems with AI systems that privacy scholars have identified. I conclude by assessing what might be done to help address some of these issues.</p>

**Identifying Information**

Name:	Bair, Stephanie
School:	BYU Law School

**Paper Information**

Title:	Impoverished IP
Abstract:	<p>Intellectual Property (IP) scholarship is generally concerned with how innovation policy impacts social welfare by providing appropriate incentives for innovation. But lately, the question of who participates in IP creation—with an eye to distributive justice as well as social welfare more broadly—has been getting more attention. Most scholars writing in this vein acknowledge IP's shortcomings in achieving proportionate participation and representation across socioeconomic, race, and gender lines. But many argue that in spite of these flaws, IP regimes can advance distributive justice by giving the poor and other members of disadvantaged groups opportunities to accumulate wealth and improve their position in society. Yet the aspiration some hold out for IP as this particular type of tool for distributive justice is, unfortunately, doomed to failure, because it overlooks how poverty impacts creative decision-making. A large and growing body of psychological research shows that poverty changes the decision-making of those experiencing it. This Article argues that in fact, poverty makes it very difficult to think in ways that bring about the creative advances IP requires. IP is thus inherently limited as a mechanism for escaping poverty. Poverty's impact on creative thinking also has wide-ranging implications for innovation theory and policy that reach beyond specific demographic groups. This Article explores how the psychology of poverty intersects with IP, and in doing so, makes four main contributions to the literature. First, it calls into question the feasibility of scholarly calls for IP to act as a mechanism for empowering the poor. Second, it offers an additional, novel explanation for why we see lower levels of IP participation among socioeconomically disadvantaged groups. Third, it argues that IP scholars need to start looking beyond incentives in their quest to optimize socially beneficial innovation. While IP's dominant utilitarian theory posits that IP provides needed incentives to innovate, what the account fails to consider is the possibility that some otherwise willing participants are unable to respond to these incentives. Finally, in offering policy recommendations, it turns IP scholars' current thinking about IP and distributive justice on its head. While these scholars argue that IP—a mechanism traditionally used to spur innovation—should be used to achieve distributive justice, this Article proposes that policies more directly aimed at attaining distributive justice will not only be more effective, but should also help promote innovation.</p>

**Identifying Information**

Name:	Banasiuk, Joanna
School:	University of Bialystok

**Paper Information**

Title:	Copyright exhaustion in the digital environment - the EU and international perspective
Abstract:	Recent decisions of the Court of Justice of the European Union regarding the exhaustion of copyright in the digital environment have provoked a lively discussion among the representatives of the doctrine. Recognition by the court of the possibility of the exhaustion of the distribution right with regard to a copy of a computer program leads to a question about the validity of copyright protection paradigms. Is it possible to exhaust the right to distribute electronic copies of works? Do we need international treaties in this area? Is it necessary to revise existing international agreements in terms of exhaustion?

### Identifying Information

Name:	Banerjee, Arpan
School:	University of New South Wales/Jindal Global Law School

### Paper Information

Title:	Fake News as an IP Problem
Abstract:	<p>Much attention has been paid to the notion of “fake news” in recent years, primarily as an instrument for influencing political opinion. However, the same mechanisms that underlie the spread of “fake news” (disregard for truth, sensationalism, playing on emotions, etc.— conduct which we might term “informational dishonesty”) are increasingly occurring in an economic context. Given the effectiveness of these mechanisms, the ease of proliferation in today’s information ecosystem, and potential of economic gain by parties, dishonest information practices with economic effects are on the rise. Our paper proposes to identify and categorize instances in which dishonest information practices cause harm cognizable under IP theories (such as author’s rights, business reputation, trademark and false advertising) as well as the extent to which such practices are limited by free speech rights. With assistance from a reputed IP surveillance company, we seek to develop empirical evidence as to the trends, incidence and frequency of the various categories, and based on that, suggest criteria that could aid online platforms in identifying such practices.</p>

**Identifying Information**

Name:	Bartow, Ann
School:	University of New Hampshire School of Law

**Paper Information**

Title:	The Race and Gender of School Branding: What Can Be Done About High School, College and University Mascots That Are Almost Always Male and Sometimes Racialized?"
Abstract:	This paper explains that the vast majority of schools, public and private, at every level of education, brand themselves with mascots that are overwhelmingly depicted as male. When there is a "female" mascot, she is generally secondary, a subservient homologue to a male mascot, and highly feminized. Trademark laws could, but probably doesn't at present, work in conjunction with Title IX of the Civil Rights Act to address this gender based representational discrimination. Paradoxically, some "primary" school mascots are racialized, but when they are, it is usually in a stereotypical and offensive manner. Efforts at addressing racist school mascots using civil rights laws have failed to gain traction in the past. In the wake of the Supreme Court's decision in In Re Tam, without amendment, federal trademark laws have little to offer in term of addressing racist school mascots. After mapping the problems with overwhelming male and sometimes racist school mascots, the paper will propose several ways in which the problem could be addressed via lawsuits and legislation. Alternatives (or precursors) to lawsuits and legislation, such social media campaigns, boycotts and protests, are also discussed and evaluated.

### Identifying Information

Name:	Bedi, Suneal
School:	The Wharton School, University of Pennsylvania

### Paper Information

Title:	Errors in Measuring Patent Damages using Choice Modeling
Abstract:	<p>Conjoint analysis and other choice models are widely used today in patent infringement and class action lawsuits to calculate damages. In the patent context, the method is used to calculate the value of the infringed feature. Using these choice based methods to understand values of major attributes is generally an easy task. However, in the legal context, most cases implicate only minor attributes. To estimate the value of these minor attributes, most conjoint analysis seeks to omit some major attributes and instead attempts to hold them constant throughout the choice task. We show that this widespread method of omitting major attributes causes the estimated value of minor attributes to be substantially inflated. We first explain the details of the method, its historical use, and how it is routinely used (and ultimately abused) in patent infringement cases. Next, using both simulated data and a sample of 800 M-Turk respondents, we use hierarchical Bayes estimation to show that when major attributes are excluded in the choice set, minor attribute valuations are biased upwards. The implications of our findings are that recent jurisprudence is not correctly using conjoint analysis. Therefore, several damage awards have been substantially inflated and several class action lawsuits have been inappropriately certified. Ultimately, we seek to educate both lawyers, judges, and expert witnesses on the correct way to utilize conjoint analysis to value patented features.</p>

### Identifying Information

Name:	Bergan, David
School:	Columbia Law School

### Paper Information

Title:	Improvising Intellectual Property in Sài Gòn
Abstract:	<p>Drew Carey used to introduce the show "Whose Line Is It Anyway?" by calling it "the show where everything's made up, and the points don't matter." Doing business in Việt Nam can be thought of in the same terms, where U.S. officials point to state "capacity constraints" that mean enforcement of intellectual property (IP) "continues to be a challenge" (USTR 2018 Special 301 Report, 66). Though all the right IP laws have been passed, minimal enforcement suggests that 'points' for creativity and innovation are useless among market participants there. But this paper argues that enforcement is not the only way that IP is made. Part of what is 'made up' in Việt Nam is a concept of IP among Vietnamese engineers and their foreign employers, who negotiate a social construction of objects of exchange including trade secrets, patents, copyrights, and trademarks. IP is reproduced in this field not as legal requirement but as social practice in the workplace, where participants characterize differences in its treatment as cultural. Though participants may be ambivalent about law, this cultural frame gives IP objects — and the legality that protects and defines them — a structure as products of global distinction that represent a future aspired to by many. The points matter to the players invested in the game. This paper is drawn from a doctoral thesis based on more than a year of field research in Hồ Chí Minh City from 2012 to 2014. Methods included ethnographic observation at multiple sites, semi-structured interviews with 36 Vietnamese engineers, and numerous further interviews with expatriate managers, business owners, investors and lawyers. The study finds, first, that the construction of legality for intellectual property in this field is mediated by distinctions in practice between foreigners and local Vietnamese, framed as cultural particularly by those Vietnamese who have lived abroad. Second, it finds that IP categories and terms are generally understood among engineers working for or seeking to work for multinationals. Third, it finds that these engineers talk about IP in various terms both of triviality and of fairness, and about law in ways similarly various including both mobilization and avoidance. These findings suggest new ways to conceptualize individuals' participation in the construction of legality, or legal consciousness, and new ways to conceptualize what legality means for intangible property like IP.</p>

### Identifying Information

Name:	Bock, Jeremy
School:	Tulane Law School

### Paper Information

Title:	Expanding the Patent Office's Regulatory Footprint: A Proposal for Reimbursing Invalidation Challenges
Abstract:	<p>The patent system's apparent resilience to changes in the law, and the persistent complaints about abusive patent assertions, might reflect the futility of patent reform efforts over the past several decades. But there may be another factor contributing to the patent system's resistance to change: the regulatory coverage provided by the two primary regulatory entities in the patent system—the federal courts and the U.S. Patent &amp; Trademark Office (PTO)—may be inadequate. Because the regulatory footprint of the federal courts is limited by Article III considerations, the possibilities for expanding the PTO's regulatory footprint warrant greater attention. Given its limited mandate of examining applications and granting patents, the PTO has taken a hands-off approach to patents once they are issued. The PTO's post-issuance passivity has left the job of policing abusive assertions—and by extension, patent quality—predominantly to accused infringers, for whom the high cost of validity challenges often encourages the payment of nuisance settlements, which makes abusive assertions profitable and promotes the further procurement and assertion of patents in problematic ways. To enable and induce the PTO to take a more active role in policing abusive assertions, this Article draws from the lessons of the auto insurance industry to propose that Congress should require the PTO to collect an annual, individualized fee on each patent-in-force—which would be set according to the risk of invalidation of that patent—to fund a program to reimburse the expenses incurred by accused infringers who prevail in challenging a patent at the PTO's administrative tribunal, the Patent Trial and Appeal Board. This arrangement would help create a regulatory feedback loop that could expand the PTO's regulatory footprint in the patent system, with several potential benefits: (1) it may further encourage challenges to weak patents, as an alternative to paying nuisance settlements; (2) it may allow the PTO to indirectly regulate or influence the behavior of patentees with respect to post-issuance activities such as assertion; (3) it may provide a mechanism for the PTO to incentivize patentees to adopt quality-enhancing prosecution habits; and (4) it may create a source of fiscal pressure for the PTO that may prompt it to make operational changes to improve patent quality, in the face of possible opposition from its patentee "customers."</p>

**Identifying Information**

Name:	Buccafusco, Christopher
School:	Cardozo Law School

**Paper Information**

Title:	The Laws of Design
Abstract:	Various intellectual property doctrines regulate how products are designed. Copyrights and patents exist to encourage designers to create new and valuable designs, while trade dress laws enable consumers to understand the source of products with known designs. But many other legal fields also regulate product design. Tort law affects the safety of product designs. Environmental laws affect the efficiency of designs. And disability laws affect the accessibility of designs. Each of these other fields, among many others, constrain the choices that designers make. In so doing, they affect the pace and direction of innovation in design. This project begins to contemplate the interplay between IP laws and other substantive legal fields that regulate design to provide a fuller picture of the challenges that designers face.

**Identifying Information**

Name:	Burstein, Sarah
School:	The University of Oklahoma College of Law

**Paper Information**

Title:	Whole Designs
Abstract:	In contemporary U.S. design patent practice, an applicant can claim any visual characteristic (or set of characteristics) of a product design as a separate “design.” This “anything goes” approach has created numerous practical and legal problems. This Article argues that the concept of what constitutes a patentable “design” needs to be reworked. Utilizing insights from design theory, this Article proposes a new conception of what constitutes a patentable “design.” Specifically, it argues that a “design for an article” of manufacture should be interpreted to mean a whole design for an article of manufacture. It then lays out a framework for how this would apply for each of the three long-recognized types of protectable designs.

## Identifying Information

Name:	Burstein, Michael
School:	Cardozo Law School

## Paper Information

Title:	Toward a Theory of Inventorship in Patent Law
Abstract:	<p>The persistence and expansion of categories of unpatentable subject matter—abstract ideas, laws of nature, and physical phenomena—is both controversial as a matter of statutory construction and normatively mysterious. In this article, we offer a qualified defense of the Supreme Court’s approach to patentable subject matter in its quartet of recent cases from <i>Bilski</i> through <i>Alice</i>. We argue that the Court has drawn a conceptually clear line between what is patentable and unpatentable, and articulated a reasonable methodology that, if properly implemented, enables courts to adjudicate that line in individual cases. But the line it has drawn—between invention and discovery—is in need of stronger normative justification. The cases are missing a theory of inventorship in patent law. In each of its recent cases, the Court has found patent claims invalid because they were indistinguishable from ideas or things that were not the products of human invention—the metabolic relationship that gave rise to a diagnostic test in <i>Mayo</i>, the concepts of hedging and escrows in <i>Bilski</i> and <i>Alice</i>, and the naturally occurring human gene in <i>Myriad</i>. Separating unpatentable discoveries from patentable inventions of course raises the classic problem of determining the appropriate level of abstraction. This problem is not unique to patent law, and neither is the Court’s solution. In copyright, for example, merger doctrine denies an exclusive right in otherwise copyrightable expression when that expression is the only way in which an idea can be articulated. So too here, the Court appears to be asking when, in light of the current state of technology, the application of an unpatentable discovery functionally merges with the discovery itself. We argue that this methodology can yield predictable results and a middle ground between “everything” and “nothing” being patentable. Missing, however, from this implicit ontology of invention and discovery is a theory for distinguishing one from the other. The conventional focus on cost, in which exclusions from patentable subject matter are drawn when the beneficial effect of an incentive to invent is far outweighed by the downstream cost of reduced access for follow-on inventors, is unsatisfying. For one thing, it is deeply indeterminate, with little empirical data to support the judgments that courts appear to be making. For another, it is both under- and over-inclusive of patentability. Consider, for example, that some fundamental discoveries—like the Higgs boson or many natural medicines—are hugely expensive, while some inventions—like new software approaches—are cheap. Similarly, the cost rationale also fails to distinguish the subject matter of patent from that of other IP fields; compare again cheap software, for example, costly blockbuster movies. Turning once more to copyright as a source of analogy, we argue that just as the idea/expression dichotomy can be justified by a theory of authorship, the invention/discovery dichotomy needs a theory of inventorship. We close with preliminary thoughts about the content of such a theory, drawing in particular on the history and language of the IP clause and the Patent Act.</p>

**Identifying Information**

Name:	Carter-Johnson, Jennifer
School:	Michigan State University Law College

**Paper Information**

Title:	Impact of Intellectual Property Law and Food Regulation on the Development of a Legacy Crop Industry
Abstract:	<p>This project aims to study the impact of patented products falling into the public domain after patent expiration within the Biotechnology Agriculture (BioAg) industry. The interplay between intellectual property protection and government regulation of the related products is a complicated relationship. Once patent protection ends, within an industry in which a product has ongoing regulatory approvals, no group has incentives to invest in regulatory compliance that can be used by all competitors. Additionally, inventors continue to have data monopolies that impact the future ability to comply with regulations as the product is sold in the future. Furthermore, in highly technical industries such as BioAg, it is common for a single product, such as a genetically engineered corn variety, to be covered by multiple patents with differing expiration dates. There is no requirement that any company inform the public as to when all patents covering a product are expired and thus the product is in the public domain, and there is no reasonable way for the average farmer or researcher to discover this. Therefore, further research, expanded use and increased competition are inhibited due to lack of knowledge as to public domain status, even if the inventor continues to comply with national and international regulations. This project seeks addresses these issues by systematically examining the market for genetically engineered (GE) crops and the uses of GE traits after patent protection has expired. We designate GE crops for which the patents have expired as “legacy” to denote that they are the public domain products for use by farmers and the building blocks on which new innovation can be based. This project will identify GE legacies and determine the most efficient legal and regulatory structure to promote the use of and public access to those legacies.</p>

### Identifying Information

Name:	Chatterjee, Mala
School:	NYU School of Law

### Paper Information

Title:	Intellectual Property, Independent Creation, and the Lockean Commons
Abstract:	Copyright and patent law – which are lumped together under the phrase "intellectual property", but in fact grant exclusive rights in two very different kinds of subject matter – are predominantly regarded by U.S. scholars as having the same normative foundations. This manifests in recent caselaw, as courts have ruled in a number of ways aiming to further unify the rules of these two areas of law. One example of this tendency to theoretically unify copyright and patent law is Seana Shiffrin's paper Lockean Arguments for Private Intellectual Property, which argues against Lockean understandings of intellectual property, but also does not distinguish between copyrights and patents. This paper argues that Shiffrin's challenge is successful in the context of patent law, but not in the context of copyright, due to a significant doctrinal difference between the two. It then outlines the more general normative questions regarding what justifies intellectual property rights which are raised by this dialectic, as well as potential doctrinal implications that would result if copyright and patent law are ultimately shown to have distinct normative foundations.

**Identifying Information**

Name:	Contreras, Jorge
School:	University of Utah

**Paper Information**

Title:	The Eco-Patent Commons: A Post-Mortem Assessment
Abstract:	Commons and pledge structures have been used to achieve various goals of patent holders, including the advancement of social and philanthropic aims. We analyze the impact of the “Eco-Patent Commons” (EcoPC) on the diffusion of patented environmentally friendly technologies, using both participant interview and data analytic evidence. Established in 2008 by several large multinational companies and concluded in 2016, the not-for-profit initiative provided royalty-free access to 248 patents covering 94 “green” technologies. Our updated results show that the commons did not increase the diffusion of pledged inventions, and that the EcoPC suffered from several structural and organizational issues. Our findings have implications for the effectiveness of patent commons in enabling the diffusion of patented technologies more broadly.

### Identifying Information

Name:	Craig, Carys
School:	Osgoode Hall Law School

### Paper Information

Title:	On Gripe Sites and Trademark Rights: Taking Stock of Cooperstock
Abstract:	<p>The case of <i>United Airlines v. Cooperstock</i> (2017 FC 616) concerns the use of United Airlines' copyright- and trademark-protected corporate logos on a consumer complaints website, <a href="http://www.untied.com">www.untied.com</a>, owned and operated by McGill professor Dr. Jeremy Cooperstock. United brought an infringement action before the Federal Court of Canada alleging copyright and trademark infringement and passing off. It was held, at first instance, that parodic versions of the United Airlines' logos were commercial uses likely to cause consumer confusion and depreciation of goodwill (i.e. dilution), and so constituted trademark infringement for which no defence was available. It seems clear that reliance on the inherent limits of trademark protection failed to appropriately constrain the owner's claim to exclusivity in this case, thereby restricting critical speech, chilling the flow of information between consumers, and impinging upon the defendant's constitutional right of free expression. The decision is now on appeal, but it is not too early to draw some valuable lessons from this troubling ruling. First, and most obviously, Canada's trademark law (like many other domestic trademark regimes around the world) is in need of reform to enact explicit statutory exceptions for fair uses. Secondly, limits and exceptions in the trademark system could benefit from the judicial endorsement of a positive concept of 'user rights' similar to that articulated by the Supreme Court of Canada in its recent copyright jurisprudence. The third lesson, however, is that such developments may nonetheless be insufficient to appropriately limit trademark rights. After all, the court also held that the use of the logo also constituted copyright infringement, notwithstanding the availability of a statutory fair dealing defence for parody and the court's explicit recognition of 'user rights.' This paper will argue that, if trademark 'user rights' are to have any real traction in the legal landscape, a more compelling account is needed of how trademarks fit within and further the public interest. The persistent idea that the trademark owner is the entitled property owner deserving of protection—with the power to control the meaning of his mark, and the right to peacefully enjoy its economic value at all costs—is bolstered by the notion of corporate personality and authorship. If such assumptions are to be unsettled, trademark law requires a fuller account of the communicative and social value of marks as indicators of trade source and incubators of meaning, but also, therefore, as sites of discursive struggle, expression and dialogic exchange. It is in the expressive qualities of commercial symbols and their communicative power that we can find the justification for—and so the necessary limits of—the rights that the law affords. Whether for copyright or for trademark law, statutory defences and user rights are necessary, but not sufficient, to ensure a system that functions in the public interest, and in a manner consistent with values of free expression and the demands of a vibrant, participatory culture.</p>

**Identifying Information**

Name:	Ebrahim, Tabrez
School:	California Western School of Law

**Paper Information**

Title:	Is There "Patent" in Sharia?: Implications for Innovation in the Muslim World
Abstract:	Major sources of Sharia do not address and regulate patent protection per se—but does Sharia implicitly recognize “patent,” and if so, what degree of intangible property is permissible to allow for patent protection within fiqh (Islamic jurisprudence) guidelines? This Article augments debates among legal scholars and Muslim jurists on the permissibility of intellectual property within Sharia with a focus on the conceptual, doctrinal, and theological notions of “patent.” It argues that “patent” is an extension of property under Sharia, and examines patentable subject matter doctrine through secondary sources of Sharia. It assesses the patentable subject matter boundary between divine and human ingenuity and the issue of ownership for applications of abstract ideas, higher life forms, and natural laws and principles. It concludes with policy recommendations for economic development and innovation for Muslim countries that are investing in the growth of knowledge-based, technology-centric economies.

## Identifying Information

Name:	Folsom, Thomas
School:	Regent University School of Law

## Paper Information

Title:	Privateers in Cyberspace
Abstract:	<p>Shot: “[T]here are only two types of companies: Those that have been hacked and those that will be hacked.” Chaser: “There are only two types of companies: Those that have been hacked and those that don’t know they have been hacked.”</p> <p>1. Problem. In the United States, computer fraud and abuse are illegal. There is a vast patchwork of laws providing substantial criminal and civil penalties for violating the confidentiality, integrity, and availability of information in cyberspace. And yet piracy in cyberspace is rampant, to the extent that we have come to treat this casual outlawry rather like the weather. In respect of ubiquitous piracy, society has done something oddly worse than useless. We are holding one set of victims (data custodians who suffer a breach) liable as hostages for another set of victims (the data holders who suffer the effects of the breach) and we impose upon them wasteful consequences that do not solve the problem. Rather than penalizing once set of victims and passing the costs to other victims in a continuous loop, it would be better to design incentives aimed at identifying, penalizing, and deterring the pirates, and to prevent piracy. And yet current laws and developing norms seem to be reinforcing the existing loop.</p> <p>2. Solution. I propose a two-step solution designed to change existing norms, markets, architecture (and code) by deliberately reframing existing law. The first step is to create significant, explicit liability for data custodians and other providers of neo-tech goods and services, but simultaneously creating a safe harbor contingent upon their taking reasonable technological measures to identify the pirate after an exploit. The temporal perspective of this safe harbor assumes, of course, that the custodian has taken reasonable steps prior to the exploit, but simply recognizes the apparent futility of predictively preventing breaches by determined and skilled adversaries. More realistically, this safe harbor focuses on what the provider does after the exploit to find the pirate, and how the provider might have set things up before-hand to make later apprehension more likely. I refer to this as “post-secondary analogous liability” to suggest that it is somewhat similar to, but significantly different not only from the current regime of secondary liability but also from the various current attempts at direct, or analogous, liability already extending to data custodians. The second step is to permit privacy trade-offs, and the use of authorized third-party surrogates as part of the reasonable technological measures to secure the safe harbor. Privacy trade-offs might include measures by custodians to verify identity and location of, and the plain text of communications from those users who voluntarily decide they want to enter or store data in a relatively safe domain in cyberspace—thereby better exposing unidentified or cloaked entrants as pirates. These and other measures might create a competitive market for the development of widely used and therefore effective norms of “front-door” decryption, white-listed subspaces inside of cyberspace, and permitted “hacking back” upon clear and convincing evidence of the offense and the offender. The use of authorized third-party surrogates might support the specialized talents and resources necessary to create non-governmental, commercially available anti-piracy technology and delivery. Perhaps the ability to farm out the “reasonable technological measures” to authorized surrogates would lead to a revival of</p>

	<p>something like letters of marque and reprisal granted to certain qualified private parties authorizing them to act on behalf of data custodians to satisfy the custodians' newly incentivized need to take reasonable technological measures. We can imagine the realistic possibility of privateers in cyberspace to deal with freely roving pirates who violate the laws of nations just as if on the high seas and outside the effective jurisdiction of any nation-state.</p>
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### Identifying Information

Name:	Ford, Roger
School:	University of New Hampshire

### Paper Information

Title:	Privacy When Form Doesn't Follow Function
Abstract:	<p>Scholars and policy makers have long recognized the key role that design plays in protecting privacy, but efforts to explain why design is important and how it affects privacy have been muddled and inconsistent. This article argues that this confusion arises because “design” has many different meanings, with different privacy implications, in a way that hasn't been fully appreciated by scholars. Design exists along at least three dimensions: process versus result, plan versus creation, and form versus function. While the literature on privacy and design has recognized and grappled (sometimes implicitly) with the first two dimensions, the third has been unappreciated. Yet this is where the most critical privacy problems arise. Design can refer both to how something looks and is experienced by a user—its form—or how it works and what it does under the surface—its function. In the physical world, though, these two conceptions of design are connected, since an object's form is inherently limited by its function. That's why a padlock is hard and chunky and made of metal: without that form, it could not accomplish its function of keeping things secure. So people have come, over the centuries, to associate form and function and to infer function from form. Software, however, decouples these two conceptions of design, since a computer can show one thing to a user while doing something else entirely. Some of the most pervasive privacy problems, like online tracking and profiling, stem from this misalignment between form and function, since companies can collect, use, and disseminate information without any formal indication that that will occur. Recognizing this third dimension of design, then, can help policy makers identify the most likely privacy problems and fashion reforms directed at inducing realignment.</p>

## Identifying Information

Name:	Fromer, Jeanne
School:	NYU School of Law

## Paper Information

Title:	Minds, Machines, and the Law: The Case of Volition
Abstract:	<p>With the increasing prevalence of ever sophisticated technology—which permits machines to stand in for humans in an increasing number of contexts—the questions of whether, when, and how the so-called actions of machines can incur legal liability will also become more practically pressing. Although the law has yet to fully grapple with whether machines are (or can be) sufficiently human-like to be the subjects of the law, philosophers have spent decades contemplating such questions. Philosophers have long considered, for instance, whether human minds are simply a kind of machine—such that it is in principle possible for future artificial intelligences to possess all the properties of human minds, including consciousness, semantic understanding, deliberation, intention, and even morality and empathy—or if humans and machines are instead fundamentally different types of things and always will be, no matter how sophisticated artificial intelligence (AI) becomes. It is thus unsurprising that, in thinking through how the future of the common law should accommodate and govern an AI-filled world, the lessons to be gleaned from these classic philosophical dialectics will have undeniable relevance. Indeed, this relevance—and the need for an answer to these questions—has been a long time coming. Consider, for example, the case of copyright law: the phenomena of mechanical and mass copying—as opposed to copying at the direct hands of humans—already has a long history, and has had an enormous influence on the creation and subsequent development of copyright law itself, as to whether copies made by a machine might count as copyright infringement. More generally, these questions will also inevitably bear on a wide variety of areas of law: in assessing mens rea and actus reus in criminal law; whether there is agreement requisite to form a contract; whether an act is foreseeable so as to underpin liability in tort; and any areas of the law in which intent and volition underpin legal liability. Take copyright law, in which the law has long considered the volition of machines. In that context, courts have consistently ruled that humans possess the requisite volition to copy that underpins copyright infringement, whereas machines lack it. In a foundational case involving internet servers creating copies of messages uploaded by an individual, the court refused to assign liability to the entities deploying those servers: “Although copyright is a strict liability statute, there should still be some element of volition ... which is lacking where a defendant’s system is merely used to create a copy by a third party.” The Second Circuit advanced this reasoning to a similar conclusion against finding infringement liability for an entity that designed a machine that makes copies: “In determining who actually ‘makes’ a copy, a significant difference exists between making a request to a human employee, who then volitionally operates the copying system to make the copy, and issuing a command directly to a system, which automatically obeys commands and engages in no volitional conduct.” These courts’ discussions distinguish volitional conduct from automatic conduct, with the first court phrasing the question presented by the case to be “whether possessors of computers are liable for incidental copies automatically made on their computers using their software as part of a process initiated by a third party” and holding that the answer to this question is a resounding “no.” In</p>

other words, the courts say that only conduct which involves some conscious or volitional thought or intention can form the basis of legal liability; and in the case of machine-based operations, the courts conclude this requirement cannot be met. This essay will argue against courts' assumption that, although the actions of humans are always volitional in the legally relevant sense, the operations performed by machines inevitably lack the volition required for legal liability. We will begin by recounting the famous "Chinese Room" argument, an incredibly influential thought experiment put forth by the philosopher John Searle in 1980, and which has entirely shaped the course of philosophical thinking about computers, minds, and mental content for the nearly forty years since. Searle's thought experiment led him to conclude that because computers are capable only of syntactical rule-following, computers—unlike human minds—will never possess true understanding. Searle's conclusion provoked reactions from numerous philosophers, psychologists, and computer scientists, ultimately triggering a persistent debate regarding the possibility of "strong" AI—or, AI that genuinely possesses contentful mental states—versus only "weak" AI—or, AI which has the capacity to perform all human functions (and, indeed, perhaps to surpass human functionality) but which still lacks the capacity to understand. The essay will then argue that—whether or not we ultimately regard the "Chinese Room" argument as a successful challenge to the possibility of "strong" AI—courts, in assuming that a machine-based operation is not "volitional" in the sense required for legal liability, are making a mistake. The essay will utilize the "Chinese Room" argument and the reactions to it to demonstrate this mistake. In particular, we will argue that the courts' assumption about machine-based volition presupposes an unjustifiably limited conception of what constitutes the relevant "system" performing the operation, and what forms this "volition"—at least for the functional purposes of the law—might take. The essay will also analyze the reasons that the common law frequently requires volition and whether or not machine-based volition accords with these reasons. Building on these strands of analysis, the essay will put forth two important doctrinal conclusions. First, a business entity should not avoid legal liability for illegal conduct simply because the conduct was performed by a machine rather than a human, because it ought to be sufficient in the eyes of the law for the requisite volition to be located in an entity's system as a whole. Second, a machine might itself count as having something which is close enough to volition in the eyes of the law—even if what it possesses is different from the human volition the law is accustomed to accommodating—so long as it possesses the capacity to evaluate the relevant operation before moving forward with completing it, and even if it does not actually exercise this capacity. These conclusions thus show that machinery—and the AI of the future—might be far more amenable to legal governance than courts have so far appreciated, and that the common law is perhaps already more equipped to handle the technology of the future than we might have thought.

### Identifying Information

Name:	Frye, Brian
School:	University of Kentucky College of Law

### Paper Information

Title:	The Stolen Poem of Saint Moling: Authorship & Literary Ownership in Medieval Ireland
Abstract:	<p>One truism of copyright scholarship holds that the concept of literary ownership was a function of the printing press. As the marginal cost of producing books plummeted, the exclusive right to reproduce a particular book became increasingly valuable, and copyright was born. Another holds that it grew out of the idea of the Romantic “author-genius,” who created an entirely new and unprecedented work of authorship, and was thereby entitled to ownership. But are either of these truisms entirely true? Surely, both the printing press and the idea of the Romantic author changed the concept of literary property. And yet, neither the idea of authorship nor the concept of literary property was entirely new. The idea of authorship had existed since at least the classical era, and the concept of literary ownership had long existed in different forms, shaped by particular literary economies. I will explore the idea of authorship in medieval Ireland, and investigate how its literary economy shaped its concept of literary ownership. Copyright scholars often puckishly refer to the Irish legend of Saint Columcille and the Battle of the Book as the “first copyright litigation, and the Supreme Court has recognized it as the “mythical” origin of the “natural rights” theory of copyright. Supposedly, in the 6th century, Columcille copied Saint Finnian’s book without permission. Finnian and Columcille both claimed the copy, and asked High King Diarmait to resolve the dispute. He ruled, “To every cow its calf, to every book its copy,” and awarded the copy to Finnian. But Columcille raised an army and reclaimed the copy by force. Copyright infringement and self-help, in one package! As I have shown elsewhere, the Columcille legend is not literally true, and it has nothing to do with copyright or literary ownership. On the contrary, it was created in the 16th century by Manus O’Donnell, and was intended as an allegory, justifying the O’Donnell clan’s leadership and connecting O’Donnell to Columcille, his clan’s patron saint. But perhaps the legend of Saint Moling’s stolen poem, which legal scholarship has entirely ignored, can help illuminate the idea of authorship and concept of literary ownership in medieval Ireland. In the 7th century, the King of Leinster sent Saint Moling to ask the High King of the Ui Neill to stop taxing Leinster. Moling composed a poem in honor of the High King, in exchange for remission of the tax. He brought a bard to recite the poem, but the bard stole ahead and recited the poem to the High King as his own. When Moling arrived and recited his poem, the High King accused him of plagiarising the bard. Moling ordered the bard to prove his authorship of the poem by reciting it again. But the bard could speak only gibberish, proving that Moling was the author, so the High King apologized to Moling and suspended the tax. Obviously, the legend of Moling’s stolen poem is not literally true. It first appears in the Bórama, a text created in about the 11th century to explain why the Ui Niall were not entitled to tax Leinster. However, it reflected a prevailing norm of authorship and literary ownership, which gave poets a right of attribution and discouraged poetic plagiarism. And this norm had a long pedigree, possibly dating back to the 7th century or earlier. In medieval Ireland, poets were effectively a professional class. They enjoyed special legal rights and observed special professional rules. Among other things, poets could</p>

	<p>demand compensation for their poems, but only if their poems satisfied the professional rules of composition. One of those rules prohibited plagiarism, meaning that a plagiarized poem was worthless in the poetic economy. As a consequence, poetry was always attributed to an author, and could not be changed, while prose was often anonymous, and could be changed. Of course, these rules were often observed in the breach. But they were rules nonetheless, and they effectively governed the medieval Irish literary economy. They show that medieval Irish poets developed an idea of authorship and concept of literary ownership adapted to the literary economy in which they practiced. And they suggest that different medieval societies may have different ideas of authorship and concepts of literary ownership that we do not yet fully understand.</p>
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### Identifying Information

Name:	Fusco, Stefania
School:	Notre Dame Law School

### Paper Information

Title:	Dissemination of Academic Knowledge and Monetization of University Patents
Abstract:	<p>In recent years, scholars have intensively studied the activity of Non-Practicing Entities (NPEs) in various disciplines. Nevertheless, numerous important aspects of the NPE operations within the U.S. patent system remain unclear. As a result, there is a strong interest in learning more about these companies, their strategies, and their possible impacts on innovation in different fields. While universities have been recognized as an NPE category (Lemley, 2008), the literature lacks broad empirical studies on academic institutions acting as NPEs; furthermore, research studies have failed to address important questions about how university patent enforcement and monetization may impact the university mission, and society more generally. Because academic institutions play significant roles in both producing and disseminating knowledge, additional empirically-grounded research can add to the ongoing debate on university patent monetization, which thus far has focused almost exclusively on licensing. Although licensing and the creation of spinoffs are still the two most common strategies used to monetize patented inventions developed by universities, the aim of this study is to show that the transfer of university patents to other entities, including other NPEs, is becoming important. In this context, relevant questions include: How often do universities rely on PAEs and patent intermediaries in general to monetize their patents? What are the characteristics of the patents transferred to PAEs? Are there implications of transfer of university patents for the dissemination of academic knowledge? In this paper, we employ the USPTO Patent Assignment Dataset described in Graham et al. (2018) to examine the transfer of university patents and technology dissemination, building a new publicly-available dataset that reflects university patent transfers exclusively. By studying post-transfer events in the life of these patents, such as citations, renewals and international filings, we determine the impact that such assignments have on academic innovation. We also investigate university patent transfers by comparing those that have been assigned to other types of NPEs (or PAEs) with the assignments that universities make to all other assignees, in order to assess how these transactions differ across attributes. Over the last two decades, NPEs in the U.S. have perfected patent monetization strategies that allow universities to collect substantial revenues. Investigating the universities' responses as well as the aftermath of university patent assignments will enable scholars to more fully understand the effects of NPEs on the production and dissemination of academic innovation.</p>

### Identifying Information

Name:	Gebru, Aman
School:	Cardozo Law School

### Paper Information

Title:	Patents, Disclosure of Information, & Biopiracy
Abstract:	<p>One of the core requirements of patentability is that patent applicants provide background and contextual information about their invention to the patent office. This disclosure is expected to allow a patent examiner to ensure that the application meets patentability standards. However, because of the information-asymmetry between expert patent applicants and generalist patent examiners, applicants can withhold useful information while still receiving the benefits of exclusive patent rights. While this is a problem in the patent system in general, the challenge is even worse in a subset of inventions. The information asymmetry is more pronounced in case of inventions that rely on the genetic resource or traditional knowledge (TK) of indigenous peoples and local communities in their research. A good example is the practice of using traditional medicinal knowledge as research leads to develop modern drugs. Aspirin is one of the drugs developed out of traditional practices. A core question in these situations is whether patent applicants that rely on TK to develop their invention are required to disclose such information to the patent examiner. Reports of multiple instances show that patent applicants usually withhold information about their reliance on TK in their inventive process. As a result, they may claim exclusive property rights over what source communities have been practicing for generations. In reaction to the lack of recognition of their contribution, source communities are adopting a protectionist trend by creating restrictions on access to their resources. This article argues that the introduction of an explicit requirement in U.S. patent law compelling patent applicants to disclose their use of TK can create an efficient patent system and sustainable relationships in the relevant industries. It provides two justifications for the amendment of U.S. patent law. First, the article makes a normative case for conceiving the disclosure of origin requirement as an information-forcing rule. Imposing an obligation to disclose the source of TK would elicit socially beneficial information about the validity and scope of a claimed application from the low-cost-providers—patent applicants—thereby creating a more efficient patent system. Second, the article argues that an explicit and enforceable disclosure requirement would reverse the inefficient and troubling protectionist trend by facilitating the tracking and enforcement of obligations that researchers may have in contracts with source communities or domestic laws of source countries. The requirement will create confidence in the patent system and encouraging source communities to facilitate access to TK. The article uses efficiency and social welfare perspectives in contrast to the equity and distributive justice justifications dominating the literature. The focus of this article on domestic U.S. law is another point of contrast to the focus of the literature on international law.</p>

**Identifying Information**

Name:	George, Alexandra
School:	UNSW

**Paper Information**

Title:	China's FinTech Disruption: Intellectual Property's Role in the Revolution
Abstract:	[_pending_]

### Identifying Information

Name:	Gerhardt, Deborah
School:	UNC School of Law

### Paper Information

Title:	Trademark Law's Double Standard for Secondary Meaning
Abstract:	<p>Trademark doctrine is filled with flexible standards. Basic principles such as fame, distinctiveness and use in commerce, mean different things and are measured differently in multiple doctrinal contexts. This Article focuses on one such double standard: the difference between secondary meaning in the USPTO registration process and in federal court. Some scholars have argued for more uniformity asserting, for example, that if Section 2 bars a mark from being registered, it should also bar it from being the basis of a Section 43(a) Lanham Act claim. Marks that require secondary meaning for registration routinely thwart this ideal. The USPTO uses a strict standard of near exclusivity while federal courts appear content with some consumer recognition, irrespective of actual commercial distinctiveness. Because of this double standard, marks which could not survive the USPTO registration process are routinely protected and used to bar other uses in federal court. This double standard raises important issues about the extent to which federal courts should defer to USPTO registration decisions.</p>

### Identifying Information

Name:	Gibbons, Llew
School:	Univ of Toledo

### Paper Information

Title:	The Slippery Road From Tarnishment To Protected Commercial Speech: Unconstitutional Trademark Dilution In The Light Of Tam
Abstract:	<p>The strongest and most famous of trademarks are protected against dilution. Federal trademark dilution law protects famous trademarks from dilution by blurring and dilution by tarnishment. There is also a substantial body of state anti-trademark dilution law. However, this article will focus on The Trademark Dilution Revision Act of 2006 (TDRA) and its impermissible regulation of commercial speech. Dilution by blurring is an association between the famous mark and another mark that lessens the capacity of the famous mark to serve as a unique identifier. One doubts whether a rational owner of a famous mark would ever litigate a positive association that improves the reputation or value of the mark. Dilution by tarnishment is an association between a mark and the famous mark that harms the reputation of the famous mark. Dilution by blurring is arguably content neutral; however, dilution by tarnishment punishes the content of the speech. This non-content neutral impermissible result is the same under either federal or state anti-trademark dilution law. Section 43(c) of the Lanham Act only prohibits negative associations that tarnish the mark. This impermissible content-based prohibition raises significant first amendment issues. Recently in <i>Matal v. Tam</i>, the U.S. Supreme Court considered §2(a) of the Lanham Act. The Court held that the disparaging clause of §2(a) was an impermissible content-based regulation of speech. This Article posits that by analogy, the analysis in <i>Tam</i> applies with equal force to the law of tarnishment of famous marks which prohibits only negative associations with the famous mark. Instead of tarnishment Congress could have used the term disparagement and forbidden dilution by disparagement with equal rhetorical and legal force. Although § 43(c) has vigorous protections for non-commercial free speech uses of the mark, these protections arguably do not protect commercial speech or commercial-speech-uses of the famous mark. This article will analyze trademark dilution and the first amendment implications of <i>Tam</i>; and absent congressional action amending §43(c), it will conclude by questioning the continued viability of dilution by tarnishment as a constitutionally sound cause of action.</p>

### Identifying Information

Name:	Gilden, Andrew
School:	Willamette University

### Paper Information

Title:	Legacy Stewards
Abstract:	<p>Who should manage your social life after you die? With the proliferation of social media accounts, widespread digital content production, and advances in CGI and hologram technologies, a person's social presence increasingly extends into the digital afterlife. But how a deceased individual appears in the day-to-day lives of family, friends, fans, and followers largely hinges upon who is given legal decision-making authority over their ongoing social interactions—their cultural legacy. The primary areas of law that regulate a person's cultural legacy—trusts &amp; estates, copyright, publicity rights, and newly-enacted digital assets laws—take very different approaches towards legacy stewardship. Each area of law prioritizes one of five different stakeholders in making decisions about a decedent's continuing cultural life: (1) the family, (2), the market, (3) the state, (4) the public, and (5) the decedents themselves. This Article examines stewardship by each of these entities, and it suggests a series of reforms that better accounts for the many stakeholders in a person's ongoing interactions with the world they leave behind.</p>

**Identifying Information**

Name:	Golden, John
School:	The University of Texas School of Law

**Paper Information**

Title:	Due Process, Impartiality, and Agency Oversight of Administrative Adjudication
Abstract:	The Roberts Court has demonstrated interest in scrutinizing the constitutional legitimacy of various forms of adjudication by non-Article III tribunals. Meanwhile, the Patent and Trademark Office (PTO) has all but invited judicial scrutiny of its adjudicatory processes by engaging in a practice of “panel stacking” designed to help enable the PTO Director or Chief Judge of the Patent Trial and Appeal Board to ensure uniformity in PTO adjudication or otherwise to control case outcomes. I have argued elsewhere that at least certain forms of PTO panel stacking are of doubtful constitutionality under the Fifth Amendment’s Due Process Clause. In this project, I examine general aspects of the legal status of central agency oversight of administrative adjudication, and I take on administrative panel stacking’s constitutionality more definitively than before, examining the different balances of arguments that apply for different forms and contexts of the practice.

## Identifying Information

Name:	Goldman, Eric
School:	Santa Clara Law

## Paper Information

Title:	Content Moderation Remedies
Abstract:	<p>How online services moderate content—i.e., how online services decide what third party content to publish or remove—has become a major social issue, prompting substantial news coverage, Congressional hearings, and proposed regulatory interventions. Most of the regulatory discussion focuses on the substantive content rules, i.e., what content is fit to be published. There has also been some discussion about how online services should operationalize those content rules. This article takes a novel approach to supplement the existing discussion by focusing on the remedy question. Online services have the technical and legal power to impose remedies for rule violations, and they can impose these remedies extrajudicially by effectuating them within their network. Because these remedies function outside the formal legal system, the online services have substantial flexibility in designing and implementing their remedies for problematic content and users. So, what remedies should they impose on content or user that violates their substantive rules? And what design principles should they adopt when developing and implementing those remedies? Most Internet regulations don't address the remedies for content moderation at all. In the rare circumstances where the regulators address the topic, they treat remedies as binary: content stays up or gets taken down; user accounts remains active or are terminated. For example, the DMCA online safe harbors for third-party caused copyright infringement illustrates the regulators' binary conceptualization of remedies. 17 USC 512(c) conditions the safe harbor on "removing" or disabling access to" the allegedly infringing files and "terminating repeat infringers." In fact, online services have a long list of potential remedies available to them beyond the binary extremes. I've identified about two dozen different remedies that online services can impose on problematic content or accounts. These remedies can be organized into five major categories: (1) reduced content visibility, (2) content restrictions, (3) demonetization, (4) account restrictions, and (5) others. Not all remedies fit all circumstances or services; for example, demonetization options don't work if the online service doesn't pay users for content. Nevertheless, most of the remedies I've identified have been deployed by at least one online service and could be adopted more broadly. By taxonomizing and describing the remedy options, the article will help regulators recognize the richness of the issues and the wider range of options they can pursue; and the list should spur brainstorming among industry participants. The article will also address, for the first time, how online services should design and structure their remedies for problematic content and users. Assuming the law gives them flexibility, the article will advocate that online services should prioritize the enhancement of user speech and design a remedy set that supports this goal. For example, rather than deleting content, the online services can opt to reduce the visibility of problematic content whenever possible (and where consistent with the legal requirements). Diminishing content visibility can promote user speech by enabling niche or minority communities to communicate with each other without disturbing the service's main audience. By identifying the availability of a wider range of remedies for problematic content or speech, the article will help the online services—and regulators—develop more nuanced and fine-grained outcomes than are available with the</p>

	binary extremes. This, in turn, will result in more user speech avoiding online “death penalties” while still supporting the service’s other content moderation goals.
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### Identifying Information

Name:	Grafton, Alex
School:	UHLC

### Paper Information

Title:	Patents for the People
Abstract:	<p>Patents, as traditionally understood, are vehicles for promoting the financial interests of their holders—they secure the exclusive rights necessary for the commercialization of inventions in exchange for the idea’s public disclosure. Massive patent portfolios are used offensively, working to exclude, limit, and intimidate competition, extract rent, and generate profits. For some time, and particularly in the field of biotechnology, commentators have criticized the patent system’s privilege of private interests over the public good. The use of biomedical patents to in particular restrict access to health innovations is even said to be inherently unethical. But over the past few years, interesting examples of the use of the patent system by private actors for altruistic purposes have emerged. These include making patent disclosures and donating the claimed invention to the public and including humanitarian development provisions and restrictions on controversial applications in licensing agreements. This Essay illuminates the use of patents to achieve altruistic purposes, and in so doing, challenges traditional accounts—and criticisms—of the patent system that assume its actors always and only choose to use patents to serve their own interests.</p>

### Identifying Information

Name:	Grinvald, Leah
School:	Suffolk University Law School

### Paper Information

Title:	Intellectual Property Law and the Right to Repair
Abstract:	<p>In recent years, there has been a growing push in different U.S. states towards legislation that would provide consumers with a “right to repair” their products. Currently 18 states have pending legislation that would require product manufacturers to, among other things, make available replacement parts and repair manuals. This grassroots movement has been triggered by a combination of related factors. One such factor is the ubiquity of microchips and software in an increasing number of consumer products, from smartphones to cars, which makes the repair of such products more complicated and dependent upon the availability of information supplied by the manufacturers. Another factor is the unscrupulous practices of large, multinational corporations designed to force consumers to repair their products only through their own offered services, and ultimately, to manipulate consumers into buying newer products instead of repairing them. For example, in late 2017, Apple was caught having implemented a policy of slowing down its operating software on older iPhones to “compensate for the effects of age on their batteries.” Although Apple’s purported reasoning behind this “slow down” was not to push consumers into upgrading their phones, the secrecy behind the slowdown, along with Apple’s strenuous objection to the repair movement, paint it with more nefarious colors. These types of stories have rallied repair shops, e-recyclers, and other do-it-yourselfers to push forward, demanding a right to repair. Unfortunately, though, this legislation has stalled in some of the states. Many of the manufacturers have been lobbying the legislatures to stop the enactment of the right to repair laws based on different concerns, including how these laws may impinge on their intellectual property rights. Indeed, a right to repair may not be easily reconcilable with the United States’ far-reaching intellectual property rights regime. For example, requiring manufacturers to release repair manuals could violate a whole host of intellectual property laws, including trade secret law and copyright law. Similarly, employing measures undercutting a manufacturer’s control of the market for replacement parts might conflict with its exclusive rights under patent and design laws. This Article posits that one of the reasons for the success of the manufacturers’ lobbying campaign is that a cohesive theory that justifies a right to repair, but yet is consistent with the protection of intellectual property rights, is needed. This Article attempts to develop such a theory. In short, this Article argues that a right to repair can be justified by the very same rationales that have been used traditionally to justify intellectual property rights: it is a vital component of “Progress”; enables user innovation; and enhances the flow of technological information to the public. In addition, this Article is the first to provide a broad exploration of the various intellectual property rules and doctrines that may be relevant in the context of the current repair movement. As part of this overview, this Article identifies those areas where intellectual property rights could prevent repair laws from being fully realized, even if some of the states pass the legislation, and recommends certain reforms that are necessary to accommodate the need for a right to repair and enable it to take hold.</p>

**Identifying Information**

Name:	Grynberg, Michael
School:	DePaul University College of Law

**Paper Information**

Title:	AI and the Death of Trademark
Abstract:	Improvements in artificial intelligence technology have any number of implications for law and culture. My work in progress asks what might happen to trademark law if AI progresses to the point that we can fully outsource our consumer decisions to AIs that know our preferences better than we do? And does the thought experiment tell us anything about trademark law as it is today?

**Identifying Information**

Name:	Jones, D.R.
School:	University of Memphis School of Law

**Paper Information**

Title:	Edicts of Government: Copyright in State Legal Materials
Abstract:	<p>The Copyright Act of 1976 is silent as to the copyrightability of state government works, although Section 105 addresses the copyrightability of Federal government works. In its Compendium of U.S. Copyright Office Practices, Third Edition, the Copyright Office includes “government edicts” in its list of uncopyrightable material. The Compendium states that: “As a matter of longstanding public policy, the U.S. Copyright Office will not register a government edict that has been issued by any state, local, or territorial government, including legislative enactments, judicial decisions, administrative rulings, public ordinances, or similar types of official legal materials.” Despite “longstanding public policy” to the contrary some states have claimed copyright in government edicts. Other states have ambiguous laws concerning copyright. Access to the law is critical for citizens, and the Internet provides a vehicle for free public access. Public online accessibility, however, has often been limited or nonexistent for some state materials. There are also issues regarding annotations, notes, commentary and other supplementation which may or may not have the force of law. There are issues regarding technical standards incorporated into law. While recent Federal court decisions have tackled some of these issues, questions remain regarding the copyrightability of state government edicts. This paper examines and analyzes the background and issues surrounding the copyright of state government edicts. It considers the implications of recent court decisions. It also examines and assesses the prospects for improving public access to these works.</p>

### Identifying Information

Name:	Kadri, Thomas
School:	Yale Law School

### Paper Information

Title:	Drawing Trump Naked: Curbing the Right of Publicity to Protect Portrayals of Real People
Abstract:	<p>From Donald Trump to Lindsay Lohan to Manuel Noriega, real people who are portrayed in expressive works are increasingly targeting creators of those works for allegedly violating their “right of publicity”—a state-law tort, grounded in IP and privacy concerns, that prohibits the unauthorized use of a person’s name, likeness, and other identifying characteristics. This Article provides a new framework to reconcile publicity rights with a robust commitment to free speech under the First Amendment. After describing the current landscape in the courts, this Article scrutinizes the First Amendment theory that has motivated many of the past decisions confronting the right of publicity. It then reframes the doctrine in a new way: as four distinct defenses that have developed to assuage concerns about publicity rights interfering with speech on matters of public concern. These four defenses might seem encouraging to those who worry that publicity rights impair expressive rights. But all too often they have instead complicated and undermined the opposition to publicity rights and, as a result, they pose an unexpected and underestimated threat to free speech. To combat this threat, this Article discusses alternatives that would reframe First Amendment theory as it relates to the right of publicity. This Article argues that to best protect creators and their expressive works under the First Amendment, we must abandon traditional “educative” listener-based models of the First Amendment and instead adopt an approach that also protects the speaker-creator as a central part of enabling public discourse. Failure to adopt this speaker-focused theory in publicity doctrine will perpetuate confusion in the courts and state legislatures, an outcome that will have a chilling effect on creators who seek to portray real people in their work. Yet we must also recognize the IP and privacy interests that publicity rights may serve. As we move into an era of new technology and innovation—from “deep fakes” to revenge porn—this challenge will only intensify. To address it, courts should apply a different framework when publicity rights face off against expressive rights—a framework that not only empowers free expression, but also considers the narrow IP and privacy interests that we should all have in preventing certain uses of our images.</p>

### Identifying Information

Name:	Karol, Peter
School:	New England Law   Boston

### Paper Information

Title:	Permissive Certificates: Collectors of Art as Collectors of Permissions
Abstract:	<p>Artists have been dramatically reshaping the fine art certificate of authenticity since the 1960s. Created by conceptual artists both to meet and challenge the commercial pressures of art markets, this new form of “Permissive Certificate” has fascinated contemporary art historians ever since. Prior scholarship has shown how such documents, essentially instructions for art creation, force us to confront fundamental ontological questions on the nature of art, the relationship between artist, collector and viewer, and the influence of money and acquisitiveness on art generation. But rarely if ever have they been approached as legal instruments. This article accordingly fills that gap by construing Permissive Certificates through the complex but potent array of legal rights that they define. It argues that Permissive Certificates are not unitary instruments, but in fact an amalgamation of two distinct legal structures. They couple retrospective and traditional, if narrow, warranties on the one hand with prospective copyright licenses and rights of source association on the other. Critically, as with all copyright and source-based permissions, they are generally conditioned on the owner/licensee complying with use guidelines. Material variations from such terms place the owner/licensee outside the scope of the license, or otherwise in breach of its conditions, and at risk of claims of infringement by the artist. This approach to Permissive Certificates yields two important insights. First, they harbor an unappreciated power as a tool for artist control, particularly in jurisdictions such as the U.S. where moral rights remain relatively weak. Second, and more broadly, as art becomes increasingly more dematerialized, digitized, and recreateable, and ever more legalized in turn, Permissive Certificates will grow more and more into the locus of value for such works. Over the long run, museums and other collectors of fine art will become collectors not of objects but of permissions.</p>

### Identifying Information

Name:	Kimani, Paul
School:	Law School, University of Exeter

### Paper Information

Title:	Reformulating the Idea/Expression Dichotomy for the Better Encouragement of Creativity: A Comparative Review of the Law in the United States of America, the United Kingdom and Kenya
Abstract:	<p>This paper offers a comparative review of the idea/expression dichotomy in the United States of America (US), the United Kingdom (UK) and Kenya. It argues that a proper formulation and interpretation of this fundamental axiom of copyright law would act as a stimulus to creativity. Accordingly, the aim of this paper is to determine the best interpretation of the doctrine to encourage creativity in Kenya. Creativity is central to mankind's welfare. Indeed, creativity is necessary for a society's existence and propagation. Specifically, artistic creativity generates ideas and artefacts that are both new and positively valuable. The true nature of creativity is that it is an incremental process that relies on pre-existing ideas and works; more so, in today's postmodern culture, propelled by digital technologies and the internet, derivative works are the norm and copyright law's "author-genius" is indeed "dead"! As encouraging creativity is the key objective of copyright law, copyright law, ought to conceive of and respond to creativity in line with its true nature as an incremental process. Copyright law's internal mechanism to promote creativity, the idea/expression dichotomy, which ought to play the role of readily availing ideas for further creation has failed owing to its unprincipled formulation and interpretation which, it is contended, has led to a chilling effect on creativity. According to the idea/expression dichotomy only expressions of ideas and not ideas themselves receive copyright protection. Whereas the idea/expression dichotomy is accepted and applied in most jurisdictions, it has been extensively castigated for the lack of clarity regarding its interpretation. Courts and commentators alike have failed to offer useful guidance that may provide a principled approach towards making the distinction between ideas and expressions. "Idea" as construed by the law is markedly different from the ordinary English and philosophical meaning of the word. The law appears to define idea on a whim to encompass all those elements of a work that judges at a particular instance deem ought not to be protected. It is contended that the lack of clarity and exactness in the interpretation of the dichotomy produces the chilling effect of a decrease in creativity. It is contended that Kenyan copyright law, through a proper interpretation of the idea/expression dichotomy, can enhance creativity and the production of cultural works. In this regard, the paper argues for an adoption of a statutory based provision of the doctrine by Kenya akin to the position in the US and consistent with international copyright law. This, it is maintained, would lead to a more principled interpretation of the idea/expression dichotomy and a negation of the chilling of creativity which has arisen due to uncertainty around this principle.</p>

### Identifying Information

Name:	La Belle, Megan
School:	Catholic University

### Paper Information

Title:	Fintech: The Next Frontier in the Patent Wars?
Abstract:	<p>Historically, financial institutions have relied on trade secrets and first-mover advantages, rather than patents, to protect their inventions. For the few financial patents that were issued, conventional wisdom was that they weren't terribly interesting or important. In our 2014 study on financial patents, Heidi Schooner and I showed that banks were breaking from past patterns and increasingly seeking patent protection. We explained that financial institutions were primarily building their patent portfolios as a defensive measure--i.e., to protect themselves from infringement suits. Indeed, the finance industry successfully lobbied Congress to include provisions in the America Invents Act of 2011 that made it easier to invalidate financial patents through administrative review. Yet, two significant developments call for a revisit of our 2014 study: the rise of fintech and the filing of the first bank-on-bank patent suit (USAA v. Wells Fargo) earlier this year. This paper explores how the rise of fintech has changed the purpose of patenting among banks, and what that might mean for the future of both the financial and patent systems in this country.</p>

### Identifying Information

Name:	Laser, Christa
School:	WilmerHale

### Paper Information

Title:	Certiorari in Patent Cases at the Supreme Court
Abstract:	<p>In the decade from 2009 to 2018, the Supreme Court has decided more patent cases than in the prior three decades combined. From all appearances, we live in an age of renewed interest in patent law. However, what truly drives the Supreme Court to review patent cases? What other factors have played a role in the increased rate of certiorari of patent cases? In this Article, the authors explore the history and empirics of Supreme Court review of patent cases, the impact of recent patent legislation including the AIA and BPCIA, and the Federal Circuit's reliance on and sometimes deviance from Supreme Court precedent as factors in the Supreme Court's increased rate of review of patent cases in recent years. The authors then conduct and report on anonymized interviews with those most familiar with Supreme Court certiorari decisions to provide a qualitative assessment of the key factors that have influenced Supreme Court review of patent cases and provide analysis of how these considerations might be used in patent cases in the decade to come.</p>

### Identifying Information

Name:	Lemley, Mark
School:	Stanford Law School

### Paper Information

Title:	Without Preamble
Abstract:	<p>I'll jump right in: The Federal Circuit is ignoring a significant share of the words of patent claims. That's a bad idea as a matter of policy. It is virtually impossible to tell when the court is going to do it. And it's inconsistent with the idea that the claims define the scope of the invention, and with how the Supreme Court thinks about claim construction and its closest analogies, statutory interpretation and construing contracts.</p> <p>The culprit is a labyrinthine set of rules the Federal Circuit uses to decide whether or not to include the "preamble" to a patent claim as a part of the claim. The words of the preamble, which can sometimes amount to more than half of the whole claim, might or might not be treated as part of the invention depending on a complex of factors, including whether the claim reads as a complete sentence without it, whether the same words are used in both the preamble and the body of the claim, whether the body of the claim includes the magic word "said," and whether the preamble "is necessary to breathe life and meaning into the claim."</p> <p>In Part I I discuss the origins of the preamble rule and how it got to its current confused state. In Part II I suggest that the rule serves no useful purpose, and that if and when the Supreme Court gets such a case it will sweep the rule away. Patent applicants should be drafting patents with that fact in mind, and the rest of us should be interpreting claims with one eye on the fact that this is a doctrine whose days are numbered.</p>

**Identifying Information**

Name:	Levine, David
School:	Elon University School of Law

**Paper Information**

Title:	Information Law and Governance
Abstract:	Professor Sharon K. Sandeen of Mitchell-Hamline School of Law and I are co-authoring a new casebook, Information Law and Governance, to be published by West Academic Publishing in 2019. Our book brings together previously disparate areas of law, from trade secrecy to the Foreign Intelligence Surveillance Act (FISA) and privacy to government transparency, in a way that will teach law students and others the full-range of information law issues. While casebooks currently exist that deal with discrete information law issues, such as privacy law, trade secret law, and cyber-crimes, this book takes a holistic approach that is consistent with the myriad information-related challenges facing governments, consumers, businesses, and their attorneys. Our hope is that our book will enable students to pursue careers related to the fields of information governance, privacy, and cybersecurity, among others.

### Identifying Information

Name:	Lunney, Glynn
School:	Texas A&M University School of Law

### Paper Information

Title:	Copyright's L Curve Problem
Abstract:	<p>Copyright has a problem. The demand curve in markets for copyrighted works most closely resembles the letter "L." In most of these markets, a relatively handful of works command virtually all the demand – copyright's tall peak, and there is a relatively short tail of marginal works that command virtually no demand at all. This reality directly challenges the central, conventional justifications for copyright. The L curve means that copyright does almost nothing to provide additional incentives for works at the margins of profitability – those in the short tail. It also means that copyright does very little to improve the circumstance of the marginal, and proverbially starving, artist or author – also in the short tail. Instead, copyright lavishes riches on the most popular artists and authors -- those who fall within copyright's tall peak. Given an L-shaped demand curve, we can justify copyright on neither instrumental nor moral desert grounds. Rather than help works and authors in the short tail, copyright enriches only those very few authors and works that fall in copyright's tall peak. This article explores how we should reshape copyright to serve its constitutional purposes in the light of copyright's L curve.</p>

### Identifying Information

Name:	Macklem, Lisa
School:	University of Western Ontario

### Paper Information

Title:	A Potential Silver Lining for Canadian Users' Rights in the Cloudy Intellectual Property Provisions in the USMCA
Abstract:	<p>Perhaps the biggest challenge to the globalization afforded by the Internet and the fourth industrial revolution's knowledge economy is the recent political shift to nationalism in so many countries, not least of all in the United States. The need for both cultural access and cultural protection has possibly never been greater, but the need for that access to be on a global scale is also a clear necessity to aid in greater understanding between countries and cultures. Patricia Aufderheide and Peter Jaszi point out that copyright should be seen as "a set of policies that govern how we collectively manage our cultural heritage." Canada has long sought to maintain a full cultural exception in any trade agreements, particularly with the United States. The recent United States-Mexico-Canada Agreement (USMCA) saw Canada make some extreme concessions in Intellectual Property, such as a TRIPs-plus copyright duration agreement of life of the author plus 70 years. While there is some debate that the USMCA ultimately may not be ratified due to the recent US election, Canada is currently in the midst of a mandated five year review of the Canadian Copyright Act, making it easier to push such legislation through quickly. Copyright maximalists and protectionists have been lobbying for changes and have welcomed the longer duration provision. Canada was able to suspend the controversial Intellectual Property provisions from the CP-TPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) that replaced the Trans-Pacific Partnership, but it seems likely that the agreed to provisions of the USMCA may make it through the current copyright review before the deal is even ratified in all three countries. Canada has always striven to balance owners' and users' rights, and the duration and digital locks provisions in the USMCA would appear to destabilize that relationship in favor of owners. However, there is the potential to push for the expansion of users' rights within the scope of the Copyright review in order to re-establish that balance and ensure access to cultural heritage and encourage innovation and creativity. For example, a more open fair use approach could replace Canada's currently closed-list fair dealing. This paper will examine the terms of the USMCA and their effect on the ongoing legislative reviews in Canada of the Copyright Act, Broadcasting Act, and Telecommunications Act. As Michael Geist so succinctly states, "If Innovation, Science and Economic Development Minister Navdeep Bains it to retain a made-in-Canada approach to copyright, it is time to take back the pen and restore the balance lost in the fine print of the USMCA."</p>

**Identifying Information**

Name:	Maine, Jeffrey
School:	University of Maine School of Law

**Paper Information**

Title:	Attacking Innovation
Abstract:	Economists generally agree that innovation is important to economic growth and that government support for innovation is necessary. Historically, the U.S. government has supported innovation in a variety of ways: (1) a strong legal system for patents; (2) direct support through research performed by government agencies, grants, loans, and loan guarantees; and (3) indirect support through various tax incentives for private firms. In recent years, however, we have seen a weakening of the U.S. patent system, a decline in direct funding of research, and a weakening of tax policy tools used to encourage new innovation. These disruptive changes threaten the future of innovation in the United States, potentially driving innovation activities offshore to Europe and China. This article concludes that the current innovation crisis demands changes to both the patent and tax systems in order to instill confidence in the innovation landscape.

### Identifying Information

Name:	McFarlin, Tim
School:	University of La Verne College of Law

### Paper Information

Title:	Tear Down the Stairway? Copyright Injunctions and the Public Interest
Abstract:	The public interest, the last (and often least considered) factor in the post-eBay world of IP injunctive relief, bears closer examination in light of copyright's policy goals. In particular, when deciding whether to permanently enjoin the further distribution of an infringing work—and even to destroy its existing copies—how exactly should courts take the public interest into account? Using examples like the film “Rear Window” in the 1988 case of <i>Abend v. MCA</i> , as well as the song “Stairway to Heaven” in the contemporary case of <i>Skidmore v. Led Zeppelin</i> , this Article will explore: (1) the effect on the public interest if, as the Ninth Circuit worried in <i>Abend</i> , a permanent injunction ends up “denying the public the opportunity to view a classic film,” or hear a classic song, or read a classic book, “for many years to come,” and (2) how best to balance this concern with the harm that authors could suffer if defendants, after a finding of liability, are permitted to continue distributing infringing works.

**Identifying Information**

Name:	Meurer, Michael
School:	Boston University

**Paper Information**

Title:	Mind the Gap: Can We Reverse the Decline in Technology Diffusion?
Abstract:	Although the pace of innovation in the American economy has been strong and steady for decades, the diffusion of new technology from firms on the frontier to firms at middling levels of productivity has declined over the past decade or two. We review the economic literature explaining the growing productivity gap and consider law and policy reforms that could reduce the gap. Perhaps the gap is a durable new feature of the "winner-take-most" economy; or perhaps law and policy changes have slowed technology transfer, the mobility of knowledge workers, and the success rate of high-tech start-ups. We analyze the social welfare effect of reforms that could speed technological diffusion and focus particular attention on productivity, wage growth, and inequality.

**Identifying Information**

Name:	Michaels, Andrew
School:	University of Houston Law Center

**Paper Information**

Title:	Implicit Overruling and WesternGeco
Abstract:	How does one know when the Supreme Court has "implicitly overruled" a circuit panel precedent? This project will examine this question in the abstract, and then also as applied to whether the Supreme Court in WesternGeco (dealing explicitly only with foreign lost profits under 271(f)) implicitly overruled the Federal Circuit precedent of Power Integrations (on foreign lost profits under 271(a)).

### Identifying Information

Name:	Miller, Shawn
School:	Stanford Law School

### Paper Information

Title:	There's No Place Like Home (To File Your Patent Lawsuit)
Abstract:	<p>This paper investigates the drivers of venue selection in patent litigation, focusing on a consideration that has received little attention in the forum shopping literature—the importance of home court advantage. Further, it explores changes in forum shopping before and after a recent major change in patent venue law. In its May 2017 decision in <i>TC Heartland LLC v. Kraft Foods Group Brands LLC</i>, the Supreme Court reined in the Federal Circuit’s permissive venue standard, which had fueled the rise of the Eastern District of Texas as the busiest patent trial court in the nation and the preferred filing location of patent assertion entities (PAEs), derisively known as patent trolls. As others have predicted, I find that the district-by-district changes in filings since <i>TC Heartland</i> have been dramatic. For example, 72 percent more patent cases were filed in the District of Delaware the year after <i>TC Heartland</i> than the year before and the Eastern District of Texas saw a 68 percent decline during the same period. Further, the decline in filings in the Eastern District of Texas is entirely attributable to PAEs. The clumping of cases in these two districts that are both perceived as pro-patentee and located away from the principal offices of almost all defendants confirms that forum shopping has been and after <i>TC Heartland</i> continues to be common, especially by PAEs. Concerning home turf, I find that in the vast majority of cases, both before and after <i>TC Heartland</i>, plaintiffs select the district court where their principal place of business is located, a district away from their opponents’ main office, or a court that is both. Further, I find that plaintiffs with the option of filing at home or in a more distant but more plaintiff-friendly district frequently choose to litigate at home. These results hold for PAEs and practicing entities and suggest a strong rule of venue selection for patent plaintiffs: There is no place like home to file your lawsuit and no worse place than your opponent’s home. These home court preferences are plausibly explained by both the perception that parties face more sympathetic judges and juries in their home districts and the desire to minimize one’s own litigation costs or impose additional costs on opponents. Future work will investigate the importance of these factors, including by determining whether patent plaintiffs are more likely to win when litigating at home.</p>

**Identifying Information**

Name:	Morris, Sean
School:	Faculty of Law, University of Helsinki

**Paper Information**

Title:	Epistemic communities and the global nature of law-making by non-state actors
Abstract:	This paper discusses the nature of epistemic communities (private experts) in global law-making and their relevance to economic governance in particular international intellectual property norms. The paper posits that these type of non-state actors should be seen in light of their ability to delegate authority and shape international law through their function-specific technique and describes this process as ordo-legality.

### Identifying Information

Name:	Nguyen, Xuan-Thao
School:	Indiana University McKinney School of Law

### Paper Information

Title:	Selecting Innovators: Patents or VCs as Signals
Abstract:	Selecting Innovators: Patents or VCs as Signals Xuan-Thao Nguyen & Erik Hille Startups and high growth companies burn cash on their runway to meet milestones. In between VCs rounds of funding, startups acquire debt as capital. Commercial banks are the main source of cheap loans in the United States; they would be ideal lenders to startups. But lending to startups is too risky for banks because startups' cash flow is negative, tangible assets are nonexistent, and most valuable assets are intangibles. What can banks do, if they wish to lend to startups in the innovation intensive sector, to ensure that they will get paid on the loan? In an early paper, we turn to economic theory and create a signaling model with partial separating equilibria to demonstrate how banks can address the information asymmetry problem by relying on a truth-telling signal in assessing the likelihood a startup firm will obtain subsequent rounds of capital funding. The model is consistent with bank presentations and evidence from publicly available sources. We are now collecting data from TechCrunch and USPTO to support our signal theory in bank's selection of innovators. With the data, we seek to demonstrate how banks can make their selections of startups, ensuring their returns and encouraging innovations. We will report on whether patents and/or VCs are signals for technology bank loan as capital.

### Identifying Information

Name:	Perzanowski, Aaron
School:	Case Western Reserve University

### Paper Information

Title:	Abandoning Copyrights
Abstract:	<p>The ability to abandon one's property is central to the notion of free alienability. It seems perverse to require that people own things they do not want. Law thus offers doctrinal pathways that allow owners of most types of physical and intellectual property to disclaim their rights in it. Copyright, however, represents a puzzling exception. While there is a formal doctrinal test, borrowed from the common law of physical property, governing abandonment, it has become increasingly unclear and decreasingly coherent in the past four decades. This is all the more puzzling because, compared to other forms of property, abandonment of copyright is highly socially desirable because it injects works into the public domain for common use. This article explores the underappreciated problem of copyright abandonment both descriptively and normatively. Descriptively, it explores why copyright stands apart from other forms of property as uniquely lacking a practical means of abandonment. The decline of abandonment happened as an unintentional by product of the 1976 Act's departure from formalities. Normatively, it outlines the social costs of abandonment and makes the case for a unique doctrinal approach to copyright abandonment rather than one borrowed from physical property. While abandoning physical property is socially costly but individually beneficial, abandoning copyrights is individually costless but socially desirable. Law should thus take extra steps to encourage rather than complicate copyright abandonment. The article concludes by outlining the form those steps might take, including tax subsidies and incentives; "black swan" insurance; and administrative approaches.</p>

### Identifying Information

Name:	Pottinger, Nicole
School:	University of Kentucky College of Law

### Paper Information

Title:	DMCA Section 1201: Complicated Rulemaking for a Complicated Subject
Abstract:	<p>Section 1201 of the Digital Millennium Copyright Act provides that no person shall circumvent technological protective measures that effectively control access to a work protected under the Copyright Act. The Act also allows for certain exemptions, including for libraries, non-profit research institutes, and for reverse engineering. Every three years, the Copyright Office is to undergo a notice-and-comment rulemaking process to evaluate and revise the exemptions. Recently, a member of Congress questioned the efficiency of the 1201 rulemaking process in an interview with the Librarian of Congress. Additionally, many scholars question how useful the rulemaking is and whether or not the resources of the Copyright Office could be delegated more efficiently. This article argues that the appropriate amount of resources are currently being utilized in the 1201 rulemaking process due to the complex nature of the rulemaking in question. This article surveys the history of the 1201 rulemaking process and evaluates the new framework the Copyright Office has developed in order to simplify the 1201 rulemaking process as a whole. Finally, this article assesses the purpose of Section 1201 and its importance as technology continues to develop.</p>

### Identifying Information

Name:	Ramsey, Lisa
School:	University of San Diego School of Law

### Paper Information

Title:	Protectable Trademark Subject Matter in Common Law Countries and the Problem with Flexibility
Abstract:	<p>Distinctive words, names, and logos used as trademarks can provide consumers with useful information about a product's source or qualities. Examples include BILLABONG for clothing, TIM HORTONS for restaurant services, WHITTAKER'S for chocolate, SINGAPORE AIRLINES for airline travel services, and Starbuck's mermaid logo for coffee. Product packaging, product features, and other types of "trade dress" of goods and services can also be registered and protected as a trademark when they function as a source-identifying mark and meet the other requirements in the trademark law. This includes the three-dimensional shape of packaging or products, and other "non-traditional" marks that are non-verbal or non-visual such as colors, sounds, scents, flavors, textures, and the exterior or interior design of a store. Examples include a skull-shaped glass bottle for alcoholic beverages sold under the brand name Crystal Head Vodka, LEGO's Minifigure shape for toy figures; the color pink for Owens-Corning's fibrous glass residential insulation; the sound of a lighter opening, igniting, and closing for Zippo's lighters used by smokers; the scent of Play-Doh for Hasbro's toy modeling compound; the texture of leather wrapping around bottles of wine sold by the David Family Group; and the design of Apple's retail store for various electronics. This Chapter evaluates how the common law countries of Australia, Canada, New Zealand, Singapore, and the United States determine what subject matter or "signs" are eligible for trademark registration and protection. One important feature of the trademark laws in these jurisdictions is the flexibility in what types of signs can qualify as a trademark. The broadness of the definitions may be due in part to international obligations in treaties and trade agreements regulating trademarks. For example, Article 15(1) of the Trade-Related Aspects of Intellectual Property (TRIPS) Agreement provides that any sign can qualify as a trademark if it is capable of distinguishing one trader's goods or services from those of others. Some people may believe this flexibility is an advantage of the common law approach to trademark protection. However, this Chapter argues that such flexibility is more likely to stifle fair competition and the dissemination of truthful commercial speech.</p>

### Identifying Information

Name:	Reinecke, Jason
School:	Stanford Law School (former student)

### Paper Information

Title:	Lost Profits Damages for Multicomponent Products: Clarifying the Debate
Abstract:	<p>In <i>Mentor Graphics Corp. v. EVE-USA, Inc.</i>, the Federal Circuit determined that the “but for” compensatory damages test applies to calculate lost profits damages in patent infringement cases over multicomponent products. The court rejected Synopsys’s argument that because multicomponent products necessarily have many important features beyond the few that are infringing, the court should only award the plaintiff the portion of “but for” damages that are apportionable to the infringing features. Although some scholars have supported the decision, many scholars believe that the Mentor Graphics rule will tend to overcompensate patentees and that an apportionment rule would be best. I offer a comprehensive economic framework for implementing the Mentor Graphics “but for” compensatory damages scheme in scenarios that were not before the court in <i>Mentor Graphics</i> but will arise in the future in this complex multicomponent world. By exploring the implications of this framework, I provide needed clarity to the Mentor Graphics debate. First, I show that a properly constructed compensatory damages rule and the apportionment rule advocated for by Synopsys and many scholars operate far more similarly than commentators currently believe. Second, I show that if my proposed framework is adopted, then each of the concerns expressed by scholars over the Mentor Graphics rule is either alleviated, overstated, or in need of some revision. I conclude by clarifying exactly what might be concerning about the Mentor Graphics rule.</p>

## Identifying Information

Name:	Riaz, Shamreeza
School:	Queensland University of Technology Law School

## Paper Information

Title:	Use of Indian Patent Opposition Mechanism as an Access to Drugs Strategy: Statistical Analysis of Patent Opposition Cases in India
Abstract:	<p>India is a big developing country with a population of more than 1.3 billion; a vast majority of Indian population cannot afford brand-name patented drugs. The annual income of an average Indian is too low to afford certain life-saving patented drugs because the annual cost of medicine is more than thirty times higher than the annual income of an average citizen. India, as a member of the WTO, is obliged to provide patent protection for drugs, but the TRIPS Agreement includes certain public health flexibilities. This project focuses on India's use of one of the TRIPS flexibilities to improve access to cheaper drugs. The TRIPS Agreement has not provided any specific guidelines on patent opposition proceedings. The TRIPS Agreement, therefore, provides ample freedom to member states to design their patent opposition procedures in compliance with the general obligations created by TRIPS in this regard. Since 2005, India has provided a detailed legislative framework for both pre-grant and post-grant patent opposition to fully avail itself of this TRIPS flexibility. It is asserted that India designed its patent opposition mechanism keeping in view following two major objectives: (a) to meet its constitutional obligation of providing good health care to citizens by making sure availability of cheap generic versions of drugs. This objective can be referred to as "consumer welfare objective"; (b) to protect a robust generic drug industry in India with a huge pharmaceutical export potential. This objective can be referred to as "industrial or economic development objective". In 2005, India amended s 3(d) of The Patents Act 1970 as a unique provision specifically designed to improve access to drugs. It contains a list of drug forms which do not constitute patentable subject matter under the Act. Indian legislature took another innovative measure and linked this bold and unique provision with the Indian patent opposition mechanism. Use of the Indian patent opposition mechanism has not been subjected to serious academic research. In this project, I propose to adopt the following 3 step method to answer these core questions: How the Indian patent opposition mechanism has been used? To what extent has the Indian patent opposition mechanism achieved its objectives? Which form of opposition, pre-grant or post-grant, is more effective? First, I propose to collect statistical data of 250 patent opposition cases in India, 200 pre-grant oppositions and 50 post-grant oppositions. I propose to access authentic official documents available at official IP India website. Both sources of data are authentic and reliable. I will gather following pieces of information from each of these cases: What was date of filing of patent application? Whether the patent application was filed by a foreign applicant or a local applicant? Whether the patent application was filed for a drug patent or some other patent? Whether the patent was opposed by a foreign opponent or a local opponent? Whether the patent was opposed after grant or before grant? Whether the opponent was a generic manufacturer or a public health group? What was date of filing patent opposition? What were major grounds of filing patent opposition? What was date of decision on patent opposition? What was outcome of patent opposition? Second, I propose to use this data to answer around 100 questions designed to highlight overall trends in the use of Indian patent opposition mechanism. I will analyze the data quantitatively –through</p>

	frequency counts and frequency distributions such as central tendency (means) and ratios- to answer these questions. Third, I will analyse the important findings of statistical data to reach overarching conclusions about use of Indian patent opposition mechanism as an access to drugs strategy.
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### Identifying Information

Name:	Robinson, Keith
School:	SMU

### Paper Information

Title:	Used Inventions
Abstract:	<p>Emerging technologies are allowing billions of everyday devices to connect with each other via the Internet. This phenomenon is referred to as the Internet of Things (“IoT”). The IoT is a technology that allows everyday devices to (1) become “smart” and (2) communicate with other smart devices. Estimates indicate that the market for smart appliances, such as wearables, will grow to \$70 billion dollars in the next ten years. Like many other emerging technologies, the entrepreneurs and companies developing these applications will seek patent protection for their inventions. In turn, the current U.S. patent system will present challenges for IoT technologies. Many of the patent issues that were prevalent for Internet Age inventions will also be of concern for IoT technology. Specifically, IoT technology raises questions concerning divided infringement. Divided infringement occurs when more than one party performs every step of a method claim such that their collective performance infringes the claim. In the last ten years, the Federal Circuit has changed the law to make it easier for patent owners to assert method claims infringed by divided performance. What it means for an alleged infringer to “use” an invention has changed. This article assesses the Federal Circuit’s application of its expansive used invention doctrine. In doing so it asks what impact the expansion will have on innovation.</p>

**Identifying Information**

Name:	Rosenblatt, Betsy
School:	U.C. Davis School of Law

**Paper Information**

Title:	(Re)Verbing Intellectual Property
Abstract:	<p>In ordinary language, “work,” “mark,” and “design” are verbs as much as they are nouns. Likewise, although the word “invention” is a noun, it represents a thing that people do at least as much as it represents their results. And yet, intellectual property doctrines almost exclusively use "work," "mark," "design," and "invention" as nouns representing static things rather than the processes of creating those things. Copyright law assigns exclusive rights regarding “a work.” Trademark law assigns exclusive rights regarding “a mark.” Design patent law (and to some extent, copyright and trademark law) assigns exclusive rights regarding “a design.” Patent law assigns exclusive rights regarding “an invention.” This paper argues that these linguistic limitations have far-reaching implications not only for the way that law operates, but also for the way in which law shapes discourse about the value of creative and inventive activities and those who engage in them. By valuing products over processes, intellectual property law disregards the dialogic and communicative nature of creation and invention, implying that value lies only in the results of creative and inventive processes, not in the activities that lead to them or follow from them. By assigning value to one step in a multi-stage process of creation and consumption, the law freezes products and processes in time, downplays the roles of pre-existing influences and contexts in creation and invention, and devalues the roles of users, consumers, and re-users in generating the value of products. In addition, the law “thingifies” communicative activity, situating governance of that activity partially in the realm of property rather than solely in tort. A handful of scholars have noted the dual verb/noun nature of the word “work” in copyright law; this project delves further into the implications of that observation and expands it to other intellectual property areas. Specifically, it explores the doctrinal and discursive impacts of treating creative and innovative activities as nouns, and considers the possible impacts of reconceptualizing those activities as verbs.</p>

### Identifying Information

Name:	Rub, Guy
School:	The Ohio State University Moritz College of Law

### Paper Information

Title:	Preemption by Exhaustion
Abstract:	<p>The Ninth Circuit recently held that the California Resale Royalties Act, requiring resellers of artworks to pay royalties to artists when their works are resold, is preempted by the federal Copyright Act. Specifically, the court held that the doctrine of copyright exhaustion, which limits a copyright owner's control over the distribution of copyrighted materials to just the first sale thereof, prevents artists from being paid for future resales of their works. The preemption power of the copyright exhaustion doctrine is both crucially important nowadays and difficult to analyze. Recent Supreme Court decisions have interpreted both copyright exhaustion and patent exhaustion broadly, which means that right-holders are limited in using federal law to control post-sale use of their works and innovations. Consequently, right-holders are expected to turn to state law to try and extract some form of post-sale control. Their ability to do so, from a federal law perspective, is an open question. The question is especially difficult because states already play a major role in regulating secondary markets, and, at least to a degree, in doing so they vitally promote the goals of federal IP law. This work fills that gap by focusing on the goals behind the exhaustion doctrine. If exhaustion primary goal is to reduce transaction costs in secondary markets, as it supposedly is, then many state laws' causes of actions (although not all) should be unproblematic. This is also true with respect to resale royalties, which do not raise transaction costs concerns.</p>

**Identifying Information**

Name:	Sachs, Rachel
School:	Washington University School of Law

**Paper Information**

Title:	Regulating Intermediate Technologies
Abstract:	<p>Over the last several years, scholars studying health innovation policy have carefully considered the ways in which administrative agencies do and should regulate different types of technologies to encourage their development and dissemination. Scholars have examined a range of legal incentives, including patents, Food and Drug Administration (FDA) exclusivity periods, taxes, grants, health insurance reimbursement, and other tools to promote socially valuable innovations that our current system has structurally disfavored. This research has considered broad categories of technologies, including drugs, devices, and diagnostics. However, this research has neglected the temporal dimension of the issue. Specifically, a large set of innovations in the life sciences may be considered to be intermediate innovations. Scientists continue to improve these technologies over time, even as the initial products are made available to patients. Yet the relevant innovation policy levers are not set up to consider whether intermediate technologies ought to be regulated differently than technologies which are further along in the development process. Whether our existing regulatory frameworks are cognizant of an innovation's stage of development matters. In many cases, if the regulatory structure is not appropriately calibrated, the technology will be frozen in time such that future development does not occur. The essential concern is that if the regulation around the intermediate technology is not appropriately calibrated, the later-stage technology will not be developed at all. This failure would be harmful for public health and for societal welfare. Policy levers which may facially appear to be targeted at early-stage technologies are not driven by this policy question, and lack a fit with this type of consideration. This Article articulates the problem of regulating intermediate technologies in the life sciences and considers how existing laws might be altered to accommodate the situation. It chiefly argues that some of the FDA's existing regulatory approaches around devices or biologic products are already capable of addressing the problem (even if they were designed for other purposes), and others can be altered to do so. Other solutions may lie in the realm of reimbursement, in which the stage of a technology could play into the payments made by insurers for that technology.</p>

## Identifying Information

Name:	Sag, Matthew
School:	Loyola University Chicago School of Law

## Paper Information

Title:	The legal landscape for text mining and machine learning, fair use and beyond
Abstract:	<p>Individually and collectively, copyrighted works have the potential to generate information that goes far beyond what their individual authors expressed or intended. Various methods of computational and statistical analysis of text—usually referred to as text data mining (“TDM”) or just text mining—have the potential to unlock that information. However, because almost every use of TDM involves making copies of the text to be mined, the legality of that copying has become a fraught issue. One of the most fundamental questions for copyright law in the Internet age is whether the protection of the author’s original expression should stand as an obstacle to the generation of insights about that expression. How this question is answered will have a profound influence on the future of research across the sciences and the humanities, and for the development of the next generation of information technology: machine learning and artificial intelligence. The recent Authors Guild cases (Authors Guild v. Google and Authors Guild v. HathiTrust) provided a partial answer to this question. Now that the dust has settled on the Authors Guild cases, this Article aims to take stock of the legal context for TDM research in the United States. The Authors Guild cases held unambiguously that reproducing copyrighted works as one step in the process of knowledge discovery through text data mining was transformative, and thus ultimately a fair use of those works under United States law. This Article explains why that ruling must be correct as a matter of copyright’s most fundamental principles and why the precedent established in the Authors Guild cases is likely to remain settled law in the United States. This Article sets out a four-stage model of the lifecycle of text data mining research and uses this model to identify and explain the relevant legal issues beyond the core holdings of the Authors Guild cases in relation to TDM as a non-expressive use. It is essential to take this broader view into consideration because neither the HathiTrust case, nor the Google Books case addressed issues arising under contract law, the Computer Fraud and Abuse Act, the Digital Millennium Copyright Act, or cross-border copyright issues. Furthermore, although Google Books addressed the display of snippets of text as part of the communication of search results, and both Authors Guild cases addressed security issues that might bear upon the fair use claim, those holdings were a product of the particular factual circumstances of those cases and can only be extended cautiously to other contexts.</p>

### Identifying Information

Name:	Said, Zahr
School:	Univ. of Washington

### Paper Information

Title:	Uniform Jury Instructions in Copyright Law
Abstract:	<p>Copyright contains many substantive challenges that make it hard to instruct juries effectively. Existing instructions used in some circuits (as well as other instructions circulated as pattern instructions) rarely tackle the foreseeable ways in which copyright might confuse or mislead juries. Juries aren't the only ones confused. Trial transcripts often reveal judicial uncertainty over how to provide guidance adequate to the juries' tasks, and that's when the court understands copyright law, which isn't always the case (per judges' own remarks about it). Courts can and do struggle over how to instruct juries, and parties litigate over alleged instructional errors, as significant recent cases show. Because of the potential importance of the jury's role in copyright litigation, and the corresponding potential for confusion and error by both judge and jury, jury instructions in copyright law deserve scholarly attention, and they need practical reforms. This Article argues that uniform instructions could improve litigation for litigants, the judiciary, and the jury. Adoption of uniform instructions would help at least some litigants by leveling the litigation playing field to some extent, flattening distributive advantages that often seem to arise in copyright litigation when one party has resources to expend on multiple rounds of drafting jury instructions, and the other may not. It would save all parties at least some of the expense associated with instructional drafting and tinkering. Jury instructions would help many judges, most of whom are not copyright-experienced, and who would benefit from statements of law that are accurate, as non-partisan as possible, linguistically and psychologically effective, and—ideally—empirically tested for efficacy. Such instructions would also address a central reason judges often issue ineffective instructions that simply copy statutory language: risks of reversal. Judges' understandable inclination towards caution and towards fairness to the parties make innovations risky, thus unfortunately also entrenching instructional deficiencies. Offering uniform instructions carefully created—and, again, ideally, empirically tested—would introduce innovative reforms that judges could adopt with less risk of reversal on the basis of the instructional novelty, or departure from pattern instructions or statutory language. Uniform instructions could help juries if actually drafted to increase their comprehension rather than being written either to avoid reversal or to achieve one of the parties' desired outcomes. Uniformity would also increase the likelihood of compliance with copyright's larger policy objectives, such as respecting federally mandated exclusions for certain subject matter (like ideas, useful articles, and public domain elements). Reforming instructions matters especially because instructional mistakes are easy to make, but hard to detect and harder still to correct. Furthermore, the stakes of such errors are high, such as when instructions risk steering juries toward outcomes that distort copyright policy through improper calibration of the scope of copyright. The Article provides suggested instructions in key areas including: originality, substantial similarity, the derivative work right, works made for hire, and fair use. It suggests that these instructions are facially clearer, more accurate, and more compliant with copyright's policy imperatives, and it urges further work testing these instructions for efficacy.</p>

### Identifying Information

Name:	Schwartz, Victoria
School:	Pepperdine Law School

### Paper Information

Title:	Virtual Influencers
Abstract:	<p>Increasingly, there are individuals who make their living as so-called social media influencers. Brands use social media influencers as part of their marketing by having the influencer reach their consumers by means of blogs and social networks. These social media influencers get paid by brands to promote products and activities, and their payments are usually driven by demonstration of the number of followers they have. One such social media influencer, Shudu Gram, is a South African Instagram model who wears and promotes lipstick and clothing that she models. Similarly, Miquela Sousa is a 19-year-old Brazilian-American model with over a million Instagram followers who wears both streetwear and luxury brands, hangs out in trendy restaurants, and complains about the weather. What both of these social media influencers have in common is that they are not real people at all, but rather CGI creations. Shudu Gram is the creation of British photographer, Cameron-James Wilson who refers to her as an “art piece.” Sousa is an avatar created by a mysterious L.A.-based start up who claim to have expertise in artificial intelligence and robotics. Many people, however, have indicated that they thought such virtual influencers were real. Numerous popular magazines from the New Yorker to Glamour, Vogue and Cosmopolitan have begun reporting on this phenomenon. To date, however, no legal scholarship has explored the legal implications of such virtual influencers. This Article seeks to fill that space by identifying the various legal challenges presented by the growth of virtual influencers. First, it examines whether such individually oriented concepts as the Right of Publicity, defamation, or privacy torts make any sense when the individual whose “rights” would be violated is not a real person. One of the most famous right of publicity cases addresses whether a robot could violate Vanna White’s right of publicity. But it is still worth exploring whether a robot could itself have its own right of publicity. Second, it identifies the various forms of IP protection and IP ownership that may be triggered by the unique situation of virtual influencers. Some of these IP issues arise with regard to the question of the role of the virtual influencer as a copyrightable creation consideration of the role of the useful article doctrine in Copyright as well as the applicability of the existing doctrines on the copyrightability of characters. Other IP ownership issues arise to the extent that the virtual influencers purport to themselves create intellectual property. Third, it addresses the false advertisement and other legal issues raised by the fact that consumers may be fooled into thinking the virtual influencers are real people. Specifically it explores the role of FTC enforcement with social media influencers more generally and addresses how some of these precedents should be adjusted to take into account the reality of virtual influencers. Finally, the paper addresses some of the concerns that arise to the extent that some of these social influencers appear to be representatives of traditionally underrepresented minorities, but often, as in the case of Shudu Gram, are actually the creations of white men. The article suggests that virtual influencers are likely to continue to grow in importance triggering the need for careful consideration of the various legal and ethical issues at stake.</p>

**Identifying Information**

Name:	Sipe, Matthew
School:	George Washington University Law School

**Paper Information**

Title:	Patent Law's Latent Schism
Abstract:	<p>Utilitarian theory has largely come to dominate intellectual property discourse and scholarship, nowhere more strongly than in the field of patent law. That is, patents are the incentive we offer for innovation, from which all of society ultimately benefits, despite short-term monopoly costs. On the other side, a minority of embattled jurists and scholars defend the relevance of freestanding moral principles, such as desert, autonomy, or justice, and argue for a re-incorporation thereof into patent doctrine and policy. This Article offers a unique and unifying reframing of this longstanding debate: the moral principles never left patent law, if you only know where to look. On the contrary, they have come to entirely dominate and control their own half of the field; on examination, the typical utilitarian theories do an excellent job of explaining modern patent validity law, but patent infringement law is unmistakably animated by broader moral principles—even at times outright hostile to a traditional economic approach. This article examines in detail the most significant doctrines governing patent validity—novelty, non-obviousness, subject-matter eligibility, utility, written description, enablement, and inventorship—and demonstrates the strength of their relationship to utilitarian frameworks at the (often explicit) expense of others. In turn, the article explores the most significant doctrines with respect to patent infringement—relief (whether injunctive or damages), scope (vis-à-vis the doctrine of equivalents), and defenses (inequitable conduct and prior use)—and builds the case that moral frameworks alone are capable of explaining their contours. Finally, the article offers an overarching theory as to the interrelated causes of this framework schism: the adjudicatory split between the USPTO and district courts, the influence of traditional property law, and the mix of private-law and public-law features that patents exhibit.</p>

### Identifying Information

Name:	Skladany, Martin
School:	Penn State Dickinson Law

### Paper Information

Title:	Copyright's Arc
Abstract:	<p>Copyright should follow an arc across the development spectrum: copyright's scope, depth, and length should be reduced in both developed and developing countries, where in its current form it harms or hinders the development of individuals and societies, yet it should continue in varying degrees in middle-income countries like Brazil, China, India, and Nigeria, where it can have a more positive role. In developing countries copyright should be minimized to allow for the freer flow of domestic and international artwork. Over time such broad distribution would encourage developing country citizens to deepen their commitment to liberal values, as has been documented by Emily Oster and Robert Jensen in their study on the introduction of cable TV, which brought both domestic and international artwork to Indian villages and had a rapid and robust positive influence on women's perceptions of themselves and their actions. In middle-income countries, where more individuals have the opportunity to make a living as artists and to draw fulfillment from creating, copyright can help spawn an artistic renaissance and advance development through forging a constructive national identity. Yet a society may reach a stage in the transition from middle-income to rich where copyrighted art is so successful that it turns most citizens into overly passive consumers and in effect monopolizes creativity. Hence in developed countries copyright should be minimized to reduce the amount of artwork average citizens consume in an effort to spur them to create more on their own. In this arc of three distinct phases, copyright must support the human quest for value and meaning, in which creativity plays an essential part.</p>

**Identifying Information**

Name:	Sturiale, Jennifer
School:	Harvard Law School

**Paper Information**

Title:	Multidistrict Litigation and Intellectual Property
Abstract:	The Judicial Panel on Multidistrict Litigation (JPML) reports that every year, there are a number of MDLs involving intellectual property law. But the character of these MDLs is unclear. In this paper, I examine the MDLs the JPML characterizes as involving intellectual property law to better understand the nature of these MDLs—the relevant body of law (copyright, patent, trademark, etc.); the nature of the claims; and whether there is anything unifying them.

## Identifying Information

Name:	Sukhatme, Neel
School:	Georgetown Law

## Paper Information

Title:	Does Female Political Leadership Enhance Innovation in U.S. Cities?
Abstract:	<p>Despite a persistent gender gap in political participation and leadership, female parliamentary representation at the international level increased from 2% in 1970 to almost 25% in 2017 (International Parliamentary Union, 2017). U.S. municipalities showed a similar increase in female electoral success, where the percentage of female candidates who won mayoral elections increased from 2% in 1970 to 18% in 2005 (Ferreira and Gyourko, 2014). We seek to explore the impact of this shift in political leadership on innovation outcomes. While neglecting the innovation context, a robust extant literature has empirically tested whether the shift to female political leadership has affected other policy outcomes. Results have varied. For example, while Ferreira and Gyourko (2014) find no effects of female mayors on outcomes such as spending, employment, or crime rates, evidence from India suggests female leaders significantly increase public investments, such as providing clean water and enhancing educational attainment (Chattopadhyay and Duflo, 2004; Clots-Figueras, 2012). Besley and Case (2003) also show a strong relationship between female representation in state legislatures and spending on education and health issues. We believe that investments in health, education, and infrastructure might reflect long-run commitments. Hence, public leaders who prioritize these areas might also be more likely to prioritize innovation as well. As such, we believe the growth in female political leadership might also lead to heightened emphasis on policy levers that increase local innovation. Our project seeks to measure this possibility through a natural experiment framework. In particular, to address endogeneity of political leadership, we employ a static and dynamic regression discontinuity (RD) design to analyze mayoral elections in U.S. cities between 1970 and 2016. Our strategy compares patent application filings and grants based on inventor location and assignee firm location in U.S. cities where a female candidate barely won a mayoral election with such applications and grants in cities where a female candidate barely lost. Following Lee (2008) and Lee and Lemieux (2010), such narrowly decided elections provide quasi-random variation in election winners, because the gender of the candidate that wins is likely to be determined by pure chance, so long as contestants cannot systematically manipulate the election outcome. Our RD design uses two primary datasets. First, we complement already existing records on mayoral elections by Ferreira and Gyourko (2009) with information on the sex for each of the top two mayoral candidates. This results in a total dataset of thousands of mayoral elections between 1970-2016 in hundreds of U.S. cities, with information on the name, vote share, party affiliation and sex of the winning and runner-up candidates. Second, we use rich data provided by the U.S. Patent and Trademark Office on patent applications and grants to identify, at the municipal level, changes in patent application filing and granting behavior across U.S. cities over time. This includes information on the gender of patent applicants. We will also use detailed information on invention type to investigate various channels by which political leadership might influence innovation. Moreover, while gender is a primary variable of importance, we also plan to use the same identification strategy to measure other potential</p>

	influencers of innovation policy, such as party affiliation, race, and other demographics.
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### Identifying Information

Name:	Townsend Gard, Elizabeth
School:	Tulane Law School

### Paper Information

Title:	A Primer on the Classics Preservation and Access Act
Abstract:	For the first time in 20 years, duration has changed. Not only has the CTEA ban on new published works been lifted as of January 1, 2019, with 1923 works coming into the public domain. But as part of the Music Modernization Act of 2018, pre-1972 sound recordings have now partially brought under Copyright. This talk (hopefully plenary) will walk you through everything you need to know about the new act -- duration, Section 108(h), noncommercial users (and the rules coming out of the Copyright Office), and so much more. If you plan to teach this or advise institutions/people about pre-1972 sound recordings, this is the primer for you. Learn about the new Chapter 14 in the Copyright Act. There will be music! (Note: I have to catch a train back to New Orleans on Saturday morning -- trains only run on Saturday and Tuesdays back).

## Identifying Information

Name:	Tschider, Charlotte
School:	DePaul University College of Law

## Paper Information

Title:	Beyond the Black Box: Intellectual Property and the Artificially Intelligent Machine
Abstract:	<p>The future is here: organizations have begun using artificial intelligence (AI) applications in a variety of sectors and business models to automate services, crunch big data, and create next-generation devices, such as Internet of Things (IoT), self-driving cars, and AI medical devices. Health applications for AI promise to deliver personalized medicine that reduces health costs and improves health outcomes. Short-term AI investment has skyrocketed, \$15.2 billion globally in 2017, most of it in China and the United States. However, organizations will likely face challenges if they hope to recoup substantial AI investments by retaining limited monopolies on inventions. Although scholars have explored software copyright and patent protection for some time, scholars have only recently started analyzing relevant intellectual property concerns for AI applications, with most focusing on AI-generated or created intellectual property. In 2015, W. Nicholson Price built on his concept of “Black-box Medicine,” introducing the challenges of drafting enforceable patents for opaque algorithms. In 2017, Ryan Abbott explored obviousness in relation to AI and machine invention, Kalin Hristov explored copyright challenges in AI-created works, and Shlomit Yanisky-Ravid &amp; Xiaoqiong Liu recommended alternative models to patent law for AI-created inventions. In early 2018, W. Michael Schuster explored economic incentives and Ana Ramalho posed questions of patent reform for such inventions. Each of these contributions raises important questions regarding algorithms and AI, yet a critical topic has not been addressed: whether human-designed AI systems are eligible for intellectual property protection, and whether available protections advance or complicate social values and benefits. In the wake of 2014’s <i>Alice Corp. v. CLS Bank International</i>, patent eligibility for AI-enabled systems seems particularly bleak. In <i>Alice</i>, the U.S. Supreme Court associated an escrow service’s mathematical process as an “abstract idea,” which also could not qualify for patent protection under § 101. Although not specifically drawn to computerized code, <i>Alice</i> has been defined as such in the patent prosecution process. The U.S. Patent and Trademark Office (US-PTO), has, since <i>Alice</i>, drawn a near-prohibition on patentability of computer code-related claims, reducing the probability of a clear delineation of when computer code and related processes are patent-eligible. After <i>Alice</i> and <i>Bilski v. Kappos</i> (2010), two patent cases that indirectly created a presumption of non-patentability for computer code, organizations have increasingly looked to other protective models for protecting computer-enabled methods. Trade secrecy has been positioned as an alternative means for protecting discoveries and other non-patentable inventions involving computerized processes. Trade secrecy offers protection for trade secret misappropriation, but to enjoy trade secret status, an organization must, amongst other requirements, maintain reasonable secrecy. There is a tremendous, under-explained downside to trade secrecy for AI contexts. Reliance on trade secrecy not only interferes with information sharing opportunities which might collectively benefit consumers, it: 1) impedes public evaluation of AI systems and reduces the efficacy of ongoing regulatory oversight (potentially further impacting safety and prompting</p>

ethical concerns), 2) reduces the incentive to publicly disclose inventions, impacting knowledge-accretion, reuse, and licensing opportunities for a newly developing, important field, 3) requires organizations to take steps to maintain trade secrecy status, which may be incompatible with AI technology implementations, and 4) has potentially unlimited length, so technology may never enter the public domain. This article explains how AI differs from historically defined software and computer code, then explores the impact of the Alice decision and subsequent reliance on trade secrecy for human-designed AI applications. I then propose three alternative options to trade secrecy and analyze their relative benefits and opportunities: an interpretation of the Alice holding that permit patent protection for aspects of AI technologies (such as methods) and subsequent USPTO examination guidelines, a statutory patent protection similar to the Plant Patents Act with alternative monopoly length and other limitations, and the potential for sectoral regulatory exclusivity (such as by the FDA for medical device applications).

### Identifying Information

Name:	Varadarajan, Deepa
School:	Georgia State University

### Paper Information

Title:	Trade Secrecy Injunctions and eBay's Influence
Abstract:	<p>The Supreme Court's eBay v. MercExchange decision upended the world of patent remedies. Before this 2006 opinion, a successful patent plaintiff could count on receiving injunctive relief, more or less as a matter of course. In eBay, the Court rejected this automatic injunction rule. Instead, federal courts must consider four "well-established" factors and cannot presume that a patent plaintiff has demonstrated irreparable harm simply by winning her infringement case. A number of empirical studies suggest that eBay has made it harder for patent plaintiffs to obtain injunctive relief. Over the past decade, federal courts have applied eBay's more critical analysis to copyright injunctions, and more recently, to trademark injunctions. In this Article, I consider how eBay has impacted federal courts' assessment of trade secrecy injunctions and whether certain unique features of trade secret cases (e.g., disclosure risks) counsel in favor of irreparable harm presumptions.</p>

## Identifying Information

Name:	Victor, Jacob
School:	NYU Law School

## Paper Information

Title:	Reconceptualizing Compulsory Copyright Licensing
Abstract:	<p>United States copyright law generally assumes that by providing property entitlements in creative works, the free market will create balance between two competing priorities: incentivizing authors to produce new content and providing the public with access to creative works. Nonetheless, lengthy provisions of the Copyright Act outline compulsory licensing schemes that require music copyright owners to license their works to all comers at government-mandated prices. Consistent with broader scholarship on property rules and liability rules, scholars have tended to treat compulsory copyright licensing as a way of addressing the transaction costs that can prevent any market from operating efficiently. This Article questions that account, arguing that compulsory licensing plays an important and underexplored role in furthering copyright-specific policy objectives. A close analysis of the compulsory music licensing regulatory regime and its history shows that its original role was to recalibrate the balance between authors' financial incentives and public access to creative works. Unlike liability rules designed to address transaction costs, where regulators generally try to mimic market rates using market proxies, music rate setting has traditionally used a policy-oriented set of criteria explicitly designed to identify royalty rates most conducive to ensuring this balance is achieved. In more concrete terms, compulsory license rate-setting bodies have often chosen rates designed to ensure that access-fomenting technologies—from the player piano to digital radio—could flourish, while also ensuring that copyright owners' financial incentives were not compromised. In this respect, the compulsory music licensing regime has more in common with copyright-specific limitations like the fair use doctrine than it does with the liability rules frequently used in more conventional markets. In recent years, however, this access-fomenting role has begun to conflict with an approach that sees compulsory licensing as only justified in the face of transaction costs-based market failures and, accordingly, sees market mimicking as the best way to price a compulsory license. This tension can be seen in both legislative changes to the Copyright Act attempting to address new digital technologies of dissemination and in recent rate-setting decisions by the Copyright Royalty Board ("CRB"), the entity that administers the Copyright Act's compulsory music licenses. The recently passed Music Modernization Act ("MMA") brought this tension to a head by replacing the regime's policy-driven rate-setting criteria with a market-mimicking "willing buyer and willing seller" standard. The trend away from policy-driven rate-setting is problematic. Compulsory licensing still has an important role to play in ensuring an ideal balance between authors' incentives and public access, especially with respect to the burgeoning streaming industry. The history of compulsory music licensing, recent trends in fair use case law, and evidence that music copyright owners are able to extract unreasonably high licensing fees in open markets, all suggest that the relationship between streaming services and copyright owners should be regulated through a policy-driven compulsory licensing regime. The MMA complicates regulators' ability to address these issues within the existing compulsory music licensing landscape, but the malleability of the new rate-setting standard may provide ways for the CRB to further an access-fomenting approach in future rate-setting proceedings.</p>

### Identifying Information

Name:	Vishnubhakat, Saurabh
School:	Texas A&M University

### Paper Information

Title:	Inconsistent Intellectual Property Judgments
Abstract:	<p>This article explores, both analytically and empirically, inconsistent judgments by courts and administrative tribunals regarding the validity of patents and trademarks. Although correcting the erroneous grant of these IP rights was historically the province of the courts, robust administrative mechanisms now provide alternate means for error-correction. Patents are subject to review in the Patent Trial and Appeal Board; trademarks, in the Trademark Trial and Appeal Board. These administrative proceedings are competitive substitutes for judicial resolution, and litigants often have diverging preferences for court or agency process. Concurrent litigations are a frequent result, creating the potential for inconsistent judgments. Using comprehensive data on Patent Office petitions for administrative ex post review, I quantify the extent to which initial PTAB decisions to grant or deny review, as well as final PTAB decisions about patent validity, are consistent with prior or subsequent court decisions on the same patents. To evaluate these findings, I also examine analogous TTAB and court decisions pertaining to the same trademarks as a baseline. The article's key contributions are to put traditional understandings of consistent judgments into perspective with modern agency adjudication of intellectual property rights, and to recommend reforms for conserving adjudicatory resources by minimizing the potential for inconsistency and relitigation.</p>

### Identifying Information

Name:	Xiang, Joy
School:	Peking University - School of Transnational Law

### Paper Information

Title:	Domestic Innovation of Clean Technologies by Developing Countries
Abstract:	<p>This article has three major components. It first explores what takes to set up domestic innovation of clean technologies. Clean technologies are any equipment, technique, practical knowledge or skill that helps mitigate or adapt to climate change. The article next tries to understand how developing countries are faring in building domestic innovation of clean technologies. Based on data availability, the article reviews four upper middle-income countries (Malaysia, South Africa, Thailand and Turkey) and four lower middle-income countries (Armenian, India, Morocco and Pakistan) in their domestic innovation of clean technologies. The article then explores whether developing countries are in a position to build up their own innovation systems for clean technologies, instead of heavily relying on in-bound transfer of clean technologies. The article suggests steps to take for developing countries who are yet to be in a position to build own innovation systems for clean technologies. This article reflects part III of a research project exploring how to address climate change via the development and deployment of clean technologies. Part I of the research project examines whether IPR has been a major reason for the very limited transfer of clean technologies from developed countries to developing countries. The researcher's conclusion is that IPR has not been the main reason. An article on Part I is available at <a href="https://ssrn.com/abstract=2742713">https://ssrn.com/abstract=2742713</a>. Part II of the project explores different IPR management models for building mutually beneficial international cooperation for developing and deploying clean technologies; an article is on the way of publication.</p>

**Identifying Information**

Name:	Yen, Alfred
School:	Boston College Law School

**Paper Information**

Title:	Tam and the Constitutionality of Copyright's Preferences
Abstract:	<p>In Tam, the Supreme Court applied the First Amendment to invalidate preferences in the amount of intellectual property rights granted based on the content of an individual's speech. This paper will investigate the consequences of Tam for various preferences found in copyright. These preferences vary the strength of a copyright holder's rights depending on the type of work the copyright holder has chosen to create. Because differentiating protection based upon whether a work is musical, dramatic, literary, or religious in nature is a form of content based discrimination, Tam raises the possibility that these preferences must be subjected to something stronger than rational basis scrutiny, which had hitherto been the presumptive test. At least some of these preferences would fail elevated scrutiny, and presumably all would fail strict scrutiny. This raises the possibility that Tam will lead to the constitutional invalidation of portions of the copyright statute.</p>

**Identifying Information**

Name:	Yu, Peter
School:	Texas A&M University School of Law

**Paper Information**

Title:	The U.S.-China TRIPS Dispute: Episode II
Abstract:	In March 2018, the US Trade Representative filed a second WTO complaint against China over the violation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Focusing on articles 3 and 28 of the TRIPS Agreement, this complaint alleged that "China deprive[d] foreign intellectual property rights holders of the ability to protect their intellectual property rights in China as well as freely negotiate market-based terms in licensing and other technology-related contracts." How does this recent dispute compare with the previous dispute in China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights? Who will prevail? Will the resolution of the latest dispute lead to more meaningful protection to intellectual property rights holders?

### Identifying Information

Name:	Hille, Erik
School:	Southern Methodist University Economic Department

### Paper Information

Title:	Selecting Innovators: Patents or VCs as Signals
Abstract:	<p>Startups and high growth companies burn cash on their runway to meet milestones. In between VCs rounds of funding, startups acquire debt as capital. Commercial banks are the main source of cheap loans in the United States; they would be ideal lenders to startups. But lending to startups is too risky for banks because startups' cash flow is negative, tangible assets are nonexistent, and most valuable assets are intangibles. What can banks do, if they wish to lend to startups in the innovation intensive sector, to ensure that they will get paid on the loan? In an early paper, we turn to economic theory and create a signaling model with partial separating equilibria to demonstrate how banks can address the information asymmetry problem by relying on a truth-telling signal in assessing the likelihood a startup firm will obtain subsequent rounds of capital funding. The model is consistent with bank presentations and evidence from publicly available sources. We are now collecting data from TechCrunch and USPTO to support our signal theory in bank's selection of innovators. With the data, we seek to demonstrate how banks can make their selections of startups, ensuring their returns and encouraging innovations. We will report on whether patents and/or VCs are signals for technology bank loan as capital.</p>