

Shubha Ghosh

If Music Didn't Pay: Justice Holmes and the Commercialization of Intellectual Property

ABSTRACT: Justice Holmes' intellectual property jurisprudence has shaped contemporary notions of intellectual property commercialization. The author analyzes Holmes' IP decisions and places them within broader theories of Holmes' theories of judicial decision making, majoritarianism, and freedom of speech. An innovative contribution of the paper is a focus on Holmes' IP decisions from the Massachusetts Supreme Court, which were in the areas of trademark and patent licensing. The author's thesis is that Holmes' experience on the Massachusetts Supreme Court shaped his US Supreme Court decisions.