

Rethinking Intellectual Property: History, Theory, and Economics

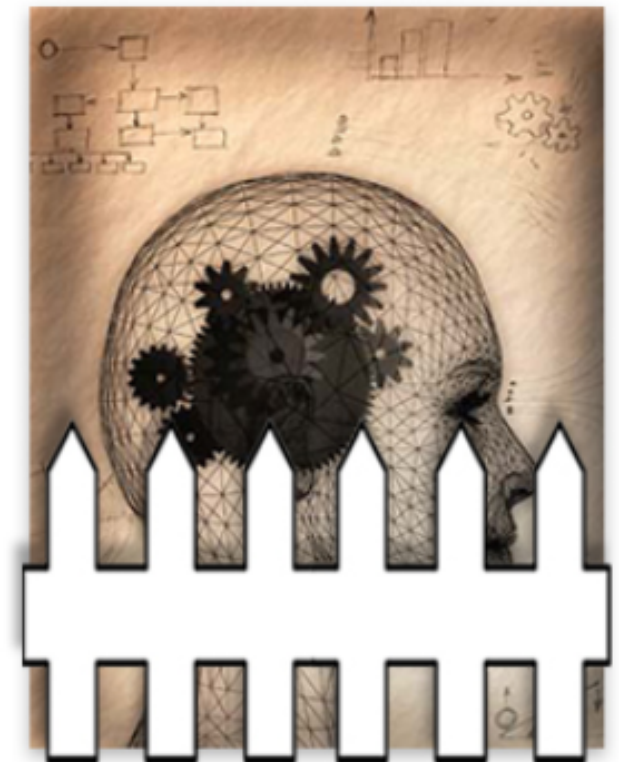
Lecture 4: Property, Scarcity, and Ideas

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Course news

- Optional mid-term test posted last week

Outrages/News of the Week

- See recent C4SIF.org posts
- [McElroy's "Contra Copyright, Again"](#)
- [Question for Randian IP Advocates](#) (Sheldon Richman)
- [Let's Make Copyright Opt-OUT](#)
- [Steal Like an Artist and Relax: Original Is Relative](#)
- [Hume on Intellectual Property and the Problematic "Labor" Metaphor](#)
- [Roderick Long's Classic Demolition of Intellectual Property](#)
- [Hayek on Patent and Copyright](#)
- [Microsoft Co-Founder on Software "Borrowing"](#)
- ['Death Of ACTA' Song Taken Down In Copyright Claim](#)

Other News

- [Patent Litigation Facts \(older\)](#)

- **\$10 million**: Cost to defend a high-stakes patent suit
- **\$3.8 million**: Median damages awarded in patent infringement cases from 2001-07
- **482,871**: Patent applications filed in 2009
- **191,927**: Patents issued in 2009
- **2,700**: Average number of patent-infringement lawsuits filed per year
- **\$1,000**: Hourly rate charged by top patent litigators
- **100**: Average number of patent cases that go to trial each year
- **57%**: Percentage of trials won by patent holders
- **34.6**: Average number of months to secure a patent

The IP Mentality



- [Did Texas Pizza Joint Rip Off Brooklyn Brewery Logo?](#)
- brewery co-founder Steve Hindy said, “You would think they would understand you can’t just **take** someone’s logo.”
- Marty Markowitz [writes on Twitter](#), “Eno's Tavern in Texas should 'do the right thing' and not **rip off** the Brooklyn Brewery's logo!”

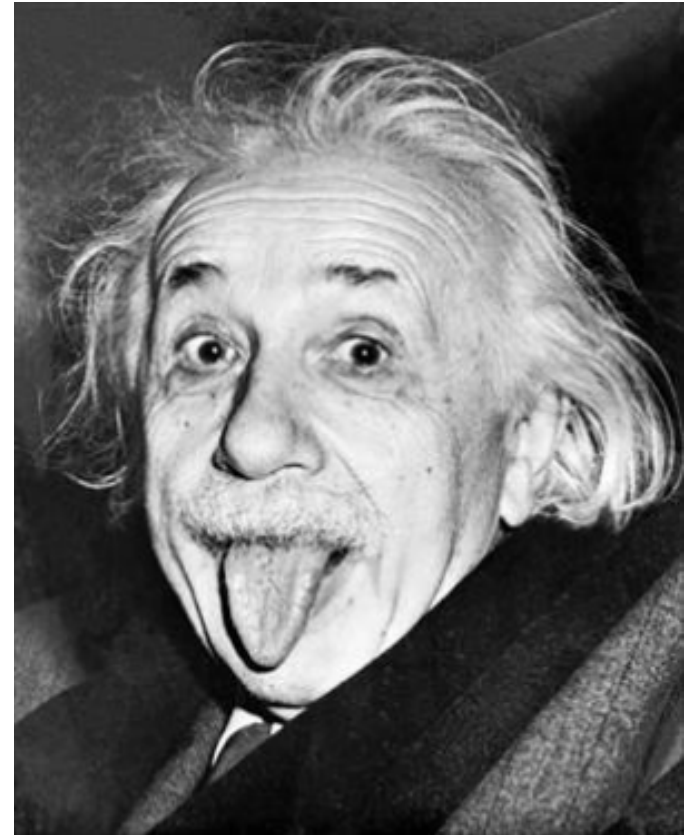


Today's Lecture

- Where we left off:
 - Modern patent and copyright: utilitarian-based complicated legislative schemes
- Today:
- Overview of arguments for IP
 - Rights based (deontological, creation-based, natural law, principled)
 - Wealth-maximization (utilitarian, consequentialist)
- Property, Scarcity, and Ideas
 - the nature of property rights, role of scarcity, and the function of the market

Arguments for IP

- Free market economist: IP opponents want to *murder Charles Dickens*
 - He had to make money by giving public readings of his works for a fee because of lack of copyright
 - Same guy: “patents and copyrights **slow down** the diffusion of new ideas for a reason, to insure there will be more new ideas to diffuse”
- The Swiss Patent Office gave Einstein a job as a patent examiner
- If you're not for IP, you're for pedophilia



Natural Law and Utilitarian: Overview

● Utilitarian

- To “maximize” incentives
 - To innovate and produce new ideas
 - To disclose ideas
- “Necessary” for Innovation and Creation
 - Obviously false
- Other Problems
 - Methodologically Incoherent (Austrian subjectivism and utility)
 - Ethical problems
 - Implications:
 - justify redistribution
 - rape

Natural Law and Utilitarian: Overview

- Utilitarian

- Other Problems

- Evidence problems

- Sincerity problems

- should be against IP based on evidence

- Implications: taxpayer funded innovation prizes

- Madison 1787

- Russia 1834

- Soviet Union 1931

- Michael Polanyi 1944 (views on tacit knowledge and spontaneous order influenced Hayek)

- Recently: \$80B medical innovation prize fund: Stiglitz, Bernie Sanders, Tabarrok (libertarian)

Natural Law and Utilitarian: Overview

● Natural Law

- Locke, Founding Fathers not on board
 - Purely civil right
 - State constitutions and laws used natural law to mask monopoly privilege grants to special interests
- Arbitrary scope and term
- Geographic enforcement
- Creationism and labor confusion
- Inconsistency: mix with utilitarian rationales
 - Rand, limited terms etc.

Upcoming Topics...

- Market vs. scarcity
- Perversity of artificial scarcity of information and knowledge
- Diluting effect of new rights
 - Negative and positive rights
 - Welfare rights as trespass
 - Four Freedoms
 - Inflation analogy
 - IP rights as positive right
 - Redistribution of rights
 - Recall origin in monopoly privilege and censorship
- The basis of libertarian rights and norms
 - Big topic