IP Literature Watch

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This newsletter contains an overview of recent publications concerning intellectual property issues. The abstracts included below are as written by the author(s) and are unedited.

IP & Antitrust

Mobility-Restricting Covenants in Business Contracts: The Case of Franchising

Francine Lafontaine (University of Michigan at Ann Arbor - Stephen M. Ross School of Business; University of Michigan at Ann Arbor - Department of Economics)
Lorenzo G. Luisetto (Cleveland State University - Cleveland State University College of Law)
J.J. Prescott (University of Michigan Law School)
U of Michigan Law & Econ Research Paper No. 25-021
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5870142

Several studies show that restrictive covenants in employment contracts, such as noncompete agreements, may affect employees in detrimental ways, including by reducing mobility and suppressing wages. While such concerns are real, these clauses also have the potential to serve legitimate business purposes by helping companies protect valuable information, which can encourage investment and training and enhance social welfare. This paper explores the use of several types of covenants, including noncompetes but also confidentiality and post-relationship non-recruitment clauses, in franchise contracts, an important and accessible category of business contracts. Many of these contracts impose restrictive covenants on franchisees but also on other individuals, notably franchisees' business partners and family members, and in some cases, their managers and employees. Patterns in the use of these covenants across these individuals are telling, suggesting that in business contracts, the information-protection role of such clauses may be important.

IP & Licensing

Licensing AI Training Data: Legal Considerations and Key Contractual Clauses

Harriet Aryee (Independent Researcher)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6045594

The rapid evolution of artificial intelligence (AI), and its impact on the intellectual property (IP) space have raised salient legal, and ethical concerns regarding the proprietary nature and use of data for training machine learning (ML) models. The paper explores the legal and contractual frameworks that govern the

licensing of datasets used for AI innovation. Although data is chief in driving AI innovation, it exists in a legal grey area, raising complex questions related to intellectual property (copyright, patent, trademark, trade secrets) protection, database rights, and ownership. By analyzing relevant case law, legislation, and existing AI databases (and datasets), the paper explores the legal background of the topic by discussing the tenets of copyright and database ownership as well as the fair use doctrine. Followed by a discussion of some key considerations for contractual clauses in data licensing agreements.

IP & Litigation

Preliminary Injunctions, Settlement, and Error-Locking

Byung-Cheol Kim (University of Alabama)
U of Alabama Legal Studies Research Paper Forthcoming
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6044515

When plaintiffs seek preliminary injunctions, courts provide early signals about case merits that shape settlement negotiations. I analyze how the accuracy of these signals affects litigation outcomes. Denial and grant both affect settlement, but asymmetrically. Denial weakens the plaintiff's bargaining position and increases settlement-the plaintiff accepts less favorable terms. Grant strengthens the plaintiff's position and decreases settlement-the plaintiff rejects settlement. The denial effect dominates, so more informative preliminary rulings promote settlement overall. This creates a tension with social welfare, however. False denials are locked in by settlement; false grants are self-corrected at trial. Courts focused on clearing dockets may deny preliminary injunctions too often, accepting higher error costs to achieve marginal gains in settlement. When defendant care is endogenous, denial-heavy standards also undermine deterrence. The framework provides guidance for ongoing debates about preliminary injunction standards in patent, antitrust, and other areas.

Litigating Personal Brand: Intellectual Property & the Construction of Self

Alexandra J. Roberts (Northeastern University (USA) – School of Law)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6182178

The concept of "personal brand" is over half a century old but has reached total saturation in the era of social media. The idea of individual as brand encompasses every aspect of self-presentation, from core attributes to "packaging," and can shape everything from how people characterize their skillset and work experience, to their choice of clothing and makeup, to the selection and deployment of catchphrases and logos.

Once they have invested time, resources, and energy into developing and in some cases monetizing their personal brand, many come to view it as a valuable commodity—something unique and distinctively their own, in which they possess exclusive rights. They view their "trademark" style as literal, rather than figurative, trademark; their manner of addressing Instagram followers as original enough to merit copyright protection; their pairing of knee-high white boots with a gray cashmere short set as an instantiation of their right of publicity.

As a consequence, the concept of personal brand has increasingly found its way into lawsuits, legal scholarship, and court decisions. Complainants shoehorn the idea of personal brand into existing doctrines such as right of publicity, trademark, trade dress, and copyright. They allege that their personal brand has been infringed, misappropriated, or directly harmed by someone else's actions or mere existence. Several

courts have held that allegations of “harm to personal brand” sufficed to support a claim for some form of tort or breach. But like the glass slipper on Cinderella’s stepsisters’ feet, the claims ill fit the facts.

This project explores how the cultural concept of personal brand has shaped, and been shaped by, the law. It reviews the invention of “personal brand,” tracing its evolution over time and interrogating its stronghold on pop culture. It considers attempts to cast impingements on personal brand as infringements on right of publicity, copyright, trademark, and trade dress. Finally, it draws conclusions about when, if ever, these doctrines ought to provide redress for the wrongs articulated.

IP & Innovation

Is Newness Necessary for Patenting?

Robin Feldman (UC Law, San Francisco)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6178761

Since its inception, the Patent Act has followed a two-part structure, with the first part serving as a threshold gateway. Loosely akin to a standing requirement, the threshold asks whether the patent applicant’s claim falls anywhere within the type of subject matter protected by patents. For 233 years, the word “new” and the corresponding concept of newness have graced every Patent Act, without exception, as part of the threshold inquiry. Today, however, a major legislative effort is underway that would remove the word “new” from the Patent Act’s opening language, replacing newness with later, technical considerations. As modern thinkers clamor to support a new chapter in patent history, this article examines historic, theoretic, and practical doctrinal perspectives, and argues that newness cannot be jettisoned from the threshold frame.

Every great edifice bears an inscription. Arguably, it is the inscription that makes the edifice great. Would Harvard’s law library loom as large in legal culture if its walls did not call laws the “wise restraints that make men free”? What would the U.S. Post Office be without the precept, “Neither snow nor rain nor heat nor gloom of night stays these couriers from the swift completion of their appointed rounds”? So too the Patent Act-like any other monumental enactment-bears an inscription on what is effectively its gateway provision. By lapidary words, the structure informs the world of its guiding spirit, its sacred principle. Altering those words would be an act of physical and intellectual vandalism.

Induced Innovation in Critical Mineral Saving Technologies

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Paolo Castelnovo (University of Insubria)
Federico Fabio Frattini (Fondazione Eni Enrico Mattei (FEEM), Milan)
Francesco Vona (University of Milan)
FEEM Working Paper No. 05-2026
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6176659

This paper develops a novel text-based approach to identify CRM-saving innovation using patent data and studies how mineral price signals shape the direction of technological change. Using patent data from 1978-2020, we distinguish technologies that rely on CRMs from those that explicitly aim to reduce their use through efficiency improvements, substitution, or recycling. We provide evidence consistent with the induced-innovation hypothesis: higher mineral prices reallocate inventive effort toward CRM-saving technologies, while having little effect on CRM-reliant innovation. The response strengthens over time and is especially pronounced for battery minerals and rare earth elements. These findings are robust to alternative

specifications and are reinforced by complementary identification strategies, including a falsification test and the use of plausibly exogenous supply-side price variation.

Inventing Green: Environmental Shocks and the Long-Term Reorientation of Innovation

Adrian Mehic (Research Institute of Industrial Economics (IFN))
IFN Working Paper No. 1552
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6292538

How are preferences for innovation formed, and what determines the long-run direction of technological change? This paper shows that early-life exposure to environmental accidents can durably reorient inventive effort decades later, even in the absence of targeted policy. I study radioactive fallout from the 1986 Chernobyl nuclear accident across Sweden, exploiting plausibly exogenous variation in local exposure driven by rainfall. Combining municipality-level fallout data with Swedish patent records from 1967 to 2021, I find that more exposed areas experienced a persistent increase in green patenting, with no change in total patenting. The effect emerges only in the early 2000s, and is driven by individuals exposed during childhood: matching inventor-level data with detailed administrative records, I show that individuals exposed to fallout during their formative years are more likely to enter the patent system as green inventors and to begin their inventive careers with green technologies, consistent with a cohort-based entry mechanism. A simple model of directed technical change with formative exposure rationalizes these findings. In addition, the paper shows that green patents originating from more exposed areas do not have a lower number of citations than other patents, suggesting that the results are not driven by low-quality innovations.

Generative AI and Patents

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Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6237338

Large Language Models (LLMs), have been described as a General Purpose Technology with the potential to reshape innovative activity. We examine whether LLMs have begun to affect the patenting process by facilitating the drafting and filing of patent applications. Using an AI-detection tool to identify applications likely assisted by LLMs, we document a sharp increase in the likely use of LLMs to write patent applications following the release of ChatGPT in November 2022. The increase is especially pronounced among micro entities, for whom the likelihood of LLM-assisted patents rises by approximately 150 percent. We find no evidence that LLM-assisted patents differ systematically from contemporaneous patents in measures of technological similarity or observable quality, though they exhibit distinct linguistic patterns consistent with AI assistance. The results suggest that LLMs lower the costs of patenting, particularly for resource-constrained inventors, without measurable declines in quality, thereby reducing barriers to participation in the innovation system.

IP Law & Policy

Artificial Code

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Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6103266

Generative artificial intelligence (AI) has rapidly transformed software development, enabling the production of high-quality code at unprecedented speed and scale. Yet despite widespread litigation over the use of copyrighted works to train AI systems in fields such as music, journalism, and visual art, the software industry has thus far remained largely absent from the AI copyright wars. The explanation lies in the pervasiveness of free and open source software (FOSS), which has provided AI developers with a vast, low-risk corpus of training material while simultaneously insulating them from copyright liability. Ironically, however, the same AI technologies that have benefited from the FOSS ecosystem now threaten to undermine its legal and normative foundations.

The core issue, this Article contends, is that much AI-generated software-what this Article terms “artificial code”-is not eligible for copyright protection under prevailing U.S. law. Because copyright requires human authorship, artificial code often falls into the public domain, rendering traditional copyright-based FOSS licensing frameworks increasingly ineffective. As copyright recedes as a viable governance mechanism, software innovators are likely to turn instead to trade secrecy and patents to protect their software innovations. These alternative regimes, while legally robust, are often at odds with the openness, reciprocity, and collaborative norms that have long defined the modern software economy.

This shift has profound implications. As more software is withheld from public access or encumbered by exclusionary patent rights, the software commons risks contraction. In turn, the contraction of that commons threatens the future development of AI systems themselves. Generative models depend on continued access to large volumes of humancurated software to avoid degradation and :model collapse,” as well as inventive AI innovations. If the FOSS ecosystem erodes, AI systems may find themselves deprived of the very inputs necessary to sustain their progress.

By tracing the historical rise of FOSS, diagnosing the legal vulnerabilities introduced by artificial code, and examining the growing pull of alternative intellectual property regimes, this Article highlights a paradox at the heart of modern AI development: generative AI may be sowing the seeds of its own stagnation. The Article concludes by exploring how these concerns may arise in other creative contexts, too, as well as assessing possible responses aimed at preserving openness in software and AI innovation while accommodating the realities of AI-generated code.

Reprioritizing International Patent Law

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Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6135407

Over the past half-century, rapid technological change and globalization have reshaped innovation and intellectual property, yet the foundational international agreements anchoring the global patent system have remained essentially unchanged. The drafters of the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty (PCT) viewed these agreements as dynamic instruments that, through procedural coordination, would rationalize international patent administration. The Paris Convention has resisted reform for decades, however, while the PCT has failed to achieve its goals of reducing

examination workloads and fostering worksharing among national patent offices. It now exacerbates the very inefficiencies it sought to address, remaining popular primarily because it allows inventors to delay filing patent applications. As patent examination enters an era of AI-assisted automation, the PCT's aspiration of shared patent office work product rests on outdated assumptions about the administrative capacity of individual agencies. PCT fees also largely finance the World Intellectual Property Organization, diverting resources from the essential tasks of patent examination. As an alternative to the PCT, this Article proposes an additional pathway for multinational patent acquisition, namely, a patent office-administered system under which a single filing with one authority is deemed a direct national filing in other jurisdictions.

Strategic Substitution in Corporate Tunneling: Evidence from Intangible Asset Regulatory Shocks in Korea

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Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6105846

This study investigates the strategic substitution of tunneling channels in response to regulatory interventions, a phenomenon conceptualized as the "Balloon Effect". Utilizing the 2018 regulatory shock in South Korea—which mandated the detailed public disclosure of trademark royalty payments—as a natural experiment, I examine how controlling shareholders navigate increased transparency by shifting expropriation activities toward more opaque intangible assets. Drawing on a comprehensive longitudinal dataset of Korean firms, our empirical analysis reveals a profound duality in the market valuation of intangible assets. While the capital market prices Research and Development (R&D) as a value-accretive "growth signal," it applies a significant "governance discount" to the volume of legal patent rights, perceiving them as "tunneling tools" within high-agency-cost environments. Our Difference-in-Differences (DID) results demonstrate that while the 2018 mandate effectively "cleansed" the brand royalty channel of its tunneling risk, it inadvertently triggered a migration of rent extraction toward the patent channel—specifically among "Aggressive Groups" characterized by large intangible asset scale and offshore tax haven infrastructure. Furthermore, I find that this "Patent Poisoning" effect is more pronounced in firms with high levels of foreign institutional monitoring, suggesting that sophisticated market participants are the first to identify and penalize such strategic risk displacement. These findings have significant implications for policymakers, underscoring that targeted regulations focusing on a single transaction type may be insufficient without a holistic approach that addresses the underlying infrastructure of corporate tunneling.

Decoupling Jurisdiction from Sovereignty

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Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6156326

Mars is a legal vacuum, literally and figuratively. With human settlement anticipated within our lifetime, the Red Planet lacks any governing legal framework despite being accessible to multiple nations with Mars-capable technology. Three countries have already landed on Mars, while others are operating satellites in Martian orbit. Conflicts over use, access, and innovation are not speculative; they are imminent.

The current legal void is not hypothetical. It exists today and grows more dangerous with each technological advance. NASA has patented dust removal systems specifically for Martian solar panels. Goodyear developed superelastic tires engineered for Mars' extreme terrain. Boeing patented latency-reduction methods allowing for increased control of Martian rovers. Yet these Mars-specific innovations enjoy no enforceable protection on their intended planet of use.

The law must go to Mars, and patent law offers a foundation for initiating Martian legal governance. As a purely economic framework focused on innovation incentives, patent law transcends political ideologies while serving clear public purposes. Yet current intellectual property regimes are inherently domestic and fail to account for innovations purpose-built for space. Extending American patent law to Mars would set a precedent for a broader extraterrestrial rule of law. This is not merely about intellectual property. It is a first, necessary step in building the rule of law in space.

Copyright Law

Rethinking Copyright Through Sustainable Creative Use: The Upcycling Problem

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Comparative Law Working Papers, University of Szeged Institute of Comparative Law and Legal Theory, Vol. 10, No. 2, 2026.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6212738

Nowadays with the increase in production and consumption processes, the threat of an environmental crisis is becoming more serious, and the understanding that a transition to sustainable practices is necessary. When looked from the perspective of copyright law, the question of how to find solutions to this need to change and how the use of copyright protected works can be aligned with sustainability goals, remains a controversial issue. In this context, to progress in direct proportion to sustainability goals, the practice known as upcycling, which is the process of innovatively and creatively reorganizing and processing unused or outdated products to transform them into new products and which is often discussed as having the potential to reduce waste, stands out. It also increases consumers' awareness of environmental issues because it allows them to reuse and repurpose materials in their lives. However, upcycling practices, like every other practice that enhances the protection of the environment, lead to a conflict with traditional forms of intellectual property rights because often upcycling will involve the reuse or transformation of copyright protected patterns or works on the final upcycled products. While upcycling practices may also raise trademark related concerns, this study deliberately limits its analysis to copyright implications of upcycling. Therefore, although relevant to certain cases mentioned later in this study, trademark related issues are outside the scope of this study. As a result, this study will explore the growing conflict between upcycling practices, which are increasingly recognized as a part of the sustainability mission, and the principles of copyright law.

Creativity as Data and the Copyright-Privacy Interface

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UCLA School of Law, Public Law Research Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6229918

Copyright is having its data privacy moment. Many pillars of the growing AI infrastructure—the training of large language models, newer retrieval augmented generation (RAG) processes, and the future of agentic AI workflows—require access to millions of copyrighted works, mining creative works not for their expressive purpose but for their data value. Copyright law, with its focus on protecting creative expression and on individualized, ex-post infringement proceedings, is currently unequipped to answer large scale questions about whether such datafication is legally permissible.

We have been here once before. In the field of privacy law, long standing notions of what privacy was—as dignitarian rights focused on individualized transgressions—were similarly disrupted with the arrival of mass surveillance tools and data mining, which extracted value not from one-off transactions, but instead from

information processed at scale. This Article argues that copyright, too, is now at a similar crossroads, and that it might learn from the parallel, more heavily theorized field of privacy law in answering the question of whether copyright could, or should, accommodate the datafication of creative works.

In making the analogy to privacy law, this Article draws out several key insights. The first is the theoretical insight that AI's mass reproduction of copyrighted works is not simply different in degree from past technological developments, but fundamentally different in kind, extracting value by drawing out large-scale patterns among many (many) copyrighted works. The second is the doctrinal insight that judges need not adhere to formalistic applications of some static conception of the law; as privacy scholars have documented, cases that confronted technological changes differing in kind from those that came before might sometimes call for parallel revolutions in the law. Finally, looking to privacy law draws out the prescriptive insight that copyright's individualized, case-by-case dispute resolution model, focused on highly fact-specific doctrines like fair use, is increasingly outdated in a world of mass infringement. The age of mass reproduction requires an ex-ante regulatory, not a transactional, copyright.

Authorship Without Authors: Rethinking Copyright and Personality Rights in the Age of Generative AI

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Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6081206

Generative artificial intelligence has radically upset the conceptual pillars of copyright law and personality rights because it separates the creative output and authorship to human beings. The present-day AI systems have the capacity to independently produce text, music, images and voice imitations that are highly reminiscent of human expression, thus undermining the anthropocentrism of the intellectual property regimes. The current paper is a critical commentary on how the Indian copyright legislation and the newly introduced doctrine of personality rights is addressing the phenomenon of authorship without authors. It claims that although copyright law in India is still on record to uphold human authorship, judicial innovation, most notably of personality and publicity rights, has become the focal point in legal opposition to AI-driven appropriation. Drawing on the doctrine of copyright and the comparative understanding of foreign jurisprudence, the paper argues that India is currently experiencing a functionalization of the protection based on copyright into a protection based on personality, particularly in those situations involving voice, likeness and creative identity. This paper ends by suggesting an intellectual redefinition of the intellectual property law in India that helps maintain human creativity but without overly limiting technological innovativeness.

Copyright In The Generative Ai Era: Reimagining Creativity And Fairness

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Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6040034

This article examines the need for copyright reform in response to the transformative impact of generative AI. It identifies key legal challenges, including the absence of clear criteria for authorship, and the infringement risks associated with both inputs (training of large language models) and outputs (AI-generated content). The authors contend that two overarching themes will drive the development of copyright law: creativity and fairness. Through a comparative analysis of how three jurisdictions-US, China and Singapore-

have addressed these challenges, the article offers practical and forward-looking insights for navigating the complex copyright landscape of the generative AI era.

IP & Trade

Intellectual Property Protection of Cosmetic Testing Data: A Legal Study

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Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5876742

The use of artificial intelligence (AI) in the cosmetics industry has significantly changed the way cosmetic products are developed, tested, and marketed. AI-based tools are increasingly used for ingredient selection, safety assessment, virtual testing, and personalised skincare solutions. While these developments promote innovation and reduce reliance on animal testing, they also raise important legal concerns regarding the protection of cosmetic testing data and AI-generated outputs under existing intellectual property and data protection laws.

This paper examines the legal framework governing the protection of cosmetic testing data, with particular emphasis on intellectual property rights and data confidentiality. It analyses whether patents, trade secrets, or regulatory data protection mechanisms provide effective safeguards for undisclosed cosmetic test data. The study also discusses the role of Article 39.3 of the TRIPS Agreement in protecting such data against unfair commercial use, especially in jurisdictions that do not provide specific data exclusivity regimes for cosmetics.

Using a doctrinal and comparative approach, the paper analyses legal developments in key jurisdictions including India, the European Union, and the United States. It explores the challenges posed by AI-driven innovation, particularly in relation to ownership, confidentiality, and the use of data in AI-powered cosmetic research. The interaction between data protection laws and intellectual property regimes is also examined to assess how consumer privacy rights can be balanced with commercial interests.

The paper argues that existing legal frameworks are not fully equipped to address the complexities of AI-based cosmetic innovation and testing data protection. It highlights the need for clearer regulatory guidance and legal reforms that balance innovation incentives, intellectual property protection, and consumer privacy. The study contributes to the evolving discourse on artificial intelligence and intellectual property law by focusing on its application within the cosmetics industry.

Other Topics

Governing with Digital Platforms: A Chinese Lesson for the U.S.?

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Duke Journal of Comparative & International law, forthcoming
Duke Law School Public Law & Legal Theory Series No. 2026-04
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6110671

Can digital platforms make law and governance more efficient? Both China and the United States host some of the world's largest digital platforms, which lead in internet technologies, provide critical digital infrastructure, and mediate private communication and public discourse. While the American experiment has

stalled, the Chinese government has made remarkable progress in leveraging digital platforms to enhance efficiency in law and governance.

The study highlights China's successes in streamlining court operations, curbing online piracy, and reshaping interactions between the Chinese government and its citizens. In practice, digital platforms have become co-governors, exerting substantial influence over public institutions rather than merely serving as conduits of state power. They have not only developed the technological infrastructure for the online processing of litigation—from filing to adjudication—but also promoted these systems to local courts and even drafted rules for the smart court regime later adopted by the Supreme People's Court. In the area of copyright protection, Chinese digital platforms have assisted with administrative enforcement and fundamentally transformed the landscape of copyright litigation. Furthermore, these platforms have enabled not only online citizen participation but also government feedback and censorship, while exercising authority over both public and private actors in the digital sphere.

Through the lens of "governing with digital platforms," the paper extends the existing literature on platform law, which has largely focused on the governance of platforms or by platforms. It further distinguishes this concept from "governing through platforms," a formulation that reflects the Chinese government's initial intentions but fails to capture the full dynamics of the state–platform alliance. At the same time, the paper underscores the risks inherent in such alliances, including constraints on individual freedom and deficits in accountability. The article concludes that, while the United States can draw lessons from China's experience by proactively governing with digital platforms to improve law and governance, it must also implement robust accountability mechanisms to safeguard democratic values.

Micro-foundations of Absorptive Capacity as Revealed by Inventor Deaths

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Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6152728

We return to the theoretical foundations of absorptive capacity and test the idea that personal experience in a field makes it easier for a firm's inventors to recognize and build upon knowledge in that field from other local firms. We propose a new empirical model of localized knowledge diffusion, which 1) measures a firm's absorptive capacity by its inventors' prior experience in a field, 2) uses a death instrument to exogenously vary the availability of knowledge of the same collaborative patent in different regions, and 3) estimates the difference in citation likelihood from all subsequent inventors across both regions, as a function of a potentially citing inventor's prior experience in the field. Consistent with the original theory of absorptive capacity, firms whose inventors have prior experience in a field are more likely to use locally available interpersonal knowledge from other firms, furthermore, this effect declines monotonically with distance. While the effects strengthen for more recent experience and multidisciplinary knowledge, the greatest benefits accrue to firms in the interaction, those whose inventors have more recent experience and that seek to absorb multidisciplinary knowledge. Interpersonal absorptive capacity within firms does not appear to localize.

Patents In Paradise: The Evolution of Patent Law in the Cayman

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University of Kansas School of Law Research Paper Series (forthcoming)
33 Journal of Intellectual Property 161 (2026)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6189919

This study examines the Cayman Islands' unique position in the global intellectual property (IP) landscape, contrasting its success as an exporter of financial and legal services with the inherently domestic nature of patent protection. We hypothesize that due to this limitation, the Cayman Islands functions as a strategic, cost-effective jurisdiction for augmenting patent protection initially obtained elsewhere. Our research provides the first comprehensive analysis of Caymanian patents, and through a quantitative examination of patent family data-including filing trends, economic valuation, geographic distribution, and assignee profiles-we find strong empirical evidence to support this thesis. Our findings reveal a disproportionate presence of high-value patent families in the Cayman Islands, particularly within the pharmaceutical and telecommunications sectors. This concentration aligns with the jurisdiction's specific economic characteristics, such as its medical tourism industry and high per capita income, as well as the established international strategies of major pharmaceutical companies. The analysis demonstrates that patent registration in the Cayman Islands is a distinct, specialized function that complements its broader role in global finance and law, offering tailored, low-cost domestic IP rights within a globally oriented portfolio. This study provides a benchmark for how other small jurisdictions can successfully navigate and compete in the global legal market through a specialized approach to intellectual property.

Is Upcycling always Green – and Should it be? Reconsidering the Rationale for Accommodating Upcycling within IP Law and Leveraging the Potential of Quotation and 'Due Cause'

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Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6176840

Climate change has forced legal systems to question many of their long-standing assumptions, including the largely linear logic that continues to underpin intellectual property (IP) law. Existing scholarship has convincingly shown that copyright and trademark laws often hinder circular practices such as repair and upcycling, prompting calls for greater flexibility or the 'greenification' of IP law. This article challenges a key premise of those proposals: that upcycling is inherently environmentally beneficial. The environmental value of upcycling is neither uniform nor self-evident, and in some contexts may be marginal or even adverse.

This uncertainty raises a normative question: should accommodation of upcycling under IP law depend on demonstrated environmental benefit, or does upcycling embody a wider social value warranting protection irrespective of ecological impact? The article argues for the latter, developing a justificatory framework grounded not primarily in environmental sustainability, but in artistic freedom and cultural diversity. On this account, environmental benefits – where present – serve as reinforcing considerations rather than the foundation for legal reform.

Building on this reframing, the article reassesses concerns about free-riding on IP holders' rights and argues for a more calibrated balance between upcycling practices and the protection of legitimate IP interests. It then examines how this balance might be realised within existing EU IP law, focusing on the underexplored

potential of the quotation exception in copyright law and the ‘due cause’ defence in trade mark law. By repositioning these defences within the sustainability discourse, the article seeks to broaden the tools available to courts and policymakers for aligning IP law with the social value of upcycling.

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