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

Standard Essential Patent Licensing: Levelling Up from an Indian Perspective

Manveen Singh (O.P. Jindal Global University - Jindal Global Law School)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6612378

Over the course of the last two decades, India has experienced a massive scale of innovation in wireless and connectivity-driven technology. This transformation, spearheaded by ultra-fast and highly reliable cellular connectivity, in particular 4G and 5G, now impacts many sectors, ranging from automobile, smart factories, and automated ports, to remote healthcare, precision farming, and energy-efficient grids. Cellular standards are the result of massive research and development (R&D) investments by a handful of innovators that contribute to the standards. These technological contributions are often protected by Standard Essential Patents (SEPs). To allow the dissemination of cellular standards, innovators typically commit to being prepared to grant licenses to their SEPs on fair, reasonable and non-discriminatory (FRAND) terms. FRAND creates a balance in the innovation ecosystem by ensuring that implementers get access to standardized technologies at reasonable royalties, and innovators gain fair and adequate compensation. Applying these principles in real world-practices requires clarity regarding the appropriate level of supply chain for granting licenses. Equally important is to have the answer to the following question: Can SEP holders choose at which level of the supply chain to license, or should all implementers of the standard be entitled to a FRAND license? It is in furtherance of the same that the present essay focuses on licensing levels vis-à-vis SEPs, and argues as to why licensing at the level of the end user device (EUD) might be beneficial from an Indian perspective.

IP & Licensing

Addressing Legal Uncertainties in Article Versions and Institutional Copyright Policies to Support Immediate Public Access to Federal Grant-Funded Publications

Yuanxiao Xu (University of Michigan Law School)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6497898

New federal public access policies – mandated by the 2022 OSTP Memo and already adopted by several key federal grant-making agencies – require authors funded by federal grants to deposit peer-reviewed publications for immediate public access. This paper explains how grant-receiving institutions and their affiliated authors can dispel legal uncertainties and comply with the new public access policies. Section I delineates how valid prior licenses enable public deposit of manuscripts notwithstanding later publishing agreements transferring copyright to the journals. Section II discusses the different versions of a manuscript created during the publication process. Section III describes the different types of third-party contributions incorporated into the different versions at different stages. Section IV explains that most of what referees, editors, and journal staff contribute to an author's manuscript is uncopyrightable. For the few copyrightable elements that can be traced back to referees and editors, Section V explains when an author receives implied license that enables public deposits in accordance with federal public access policies. Though current federal public access policies do not require the deposit of the final published version of a manuscript unless explicitly allowed by a contract with the journal, looking ahead to further expanding the reach of federally funded research, Section VI examines the legal considerations related to making such final versions publicly accessible. Section VII summarizes the key considerations discussed in the paper to help institutions develop internal policies and practices that facilitate public access for authors' scholarly works.

IP & Litigation

Extraterritorial Patent Misuse

Elizabeth I. Winston (Catholic University of America (CUA) - Columbus School of Law)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6451482

Patent law is territorial. Each nation grants patents under its own law, and those rights stop at national borders. But technology operates globally, and recent jurisdictional developments enable patentees to exploit that gap. In 2025, the Court of Justice of the European Union confirmed that European Union courts can exercise jurisdiction over patent infringement claims concerning non-EU patents when defendants are domiciled in the European Union. Patentees can now obtain remedies exceeding the scope Congress authorized. The gap must be closed, and the most straightforward mechanism for doing so is the equitable doctrine of patent misuse.

This Article argues that asserting U.S. patents in foreign courts to evade domestic statutory limitations constitutes patent misuse. The patent's term, content, and damage limitations are substantive limits on the patent right itself, not procedural rules foreign courts may disregard. When a patentee uses foreign litigation to evade statutory limitations on their patent rights, the patentee extracts value the patent does not confer. The Article proposes a two-factor framework: courts should ask whether the foreign forum grants rights U.S. law denies and whether the patentee selected that forum with evasive intent. When both factors are satisfied, the U.S. patent becomes unenforceable in U.S. proceedings until the misuse is purged.

The implications extend beyond patent law. As foreign courts expand jurisdiction over domestically created rights, sophisticated parties can treat domestic statutory schemes as optional. This Article offers one equitable mechanism for courts to enforce statutory boundaries even as geographic boundaries erode. The choice is up to the patentee. The consequence is for the law to impose.

Citation Counts and the Applicable Economic Standard: Why Patent Citation Analysis Cannot Satisfy Garretson's Apportionment Requirement

Omar Robles (Emerging Health LLC; Fordham University - Fordham College at Rose Hill)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6614700

Patent citation analysis ("PCA") measures a different economic quantity than Garretson's apportionment requirement demands. The method measures bibliometric influence within a patent citation network-a metric that research has shown correlates with patent renewal decisions and aggregate licensing revenues at the individual patent level. Patent damages law requires measuring something different: the incremental value that the specific patented feature contributes to the specific accused product relative to available non-infringing alternatives. Garretson v. Clark, 111 U.S. 120 (1884), established well over a century ago that the patent owner must give evidence tending to separate or apportion the patented feature's contribution to the accused product's value, and that such evidence must be reliable and tangible. The Federal Circuit has operationalized that requirement to mean specifically evidence of the incremental value the patented feature adds to the accused product. PCA cannot satisfy Garretson's requirement as operationalized because it supplies evidence of a different economic quantity-bibliometric influence correlated with patent renewal value-rather than the product-specific incremental contribution the law requires. That gap is structural, not technical: no adjustment for patent age, technology class, self-citations, or observation date bridges a conceptual divide between measuring network position and measuring incremental product contribution. No prior court has evaluated PCA against Garretson's requirement as the Federal Circuit has consistently operationalized it. The economic critique developed here emerges from the author's experience as a damages expert in pharmaceutical and biotechnology patent litigation, where PCA has appeared as a royalty adjustment tool for early-stage comparable licenses, and the argument has not been developed in the legal literature in this form until now.

IP & Innovation

Shaping Innovation

Sandra Baquie (International Monetary Fund (IMF))
Yueling Huang (International Monetary Fund (IMF))
Florence Jaumotte (International Monetary Fund (IMF))
Jaden Jonghyuk Kim (International Monetary Fund (IMF))
Rafael Machado Parente (International Monetary Fund (IMF))
Samuel Pienknagura (International Monetary Fund (IMF))
IMF Working Paper No. 2026/047
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6468930

This paper presents a global empirical analysis of how industrial policies (IPs) affect patent applications, with an instrumental-variable strategy that addresses selection in policy targeting by leveraging retaliatory dynamics. On average, IPs do not increase domestic patent applications over a four-year period, except when they target sectors with potential distortions or externalities, such as infant industries or low-carbon

technologies. However, IPs temporarily boost foreign patent filings within the same timeframe, consistent with strategic front-loading by foreign inventors seeking to secure technology protection, and perhaps market access, in the IP-targeted sector. This link between foreign patent applications and IPs is stronger for export-oriented policies compared to domestic subsidies, for IPs targeting innovation-central sectors, and in emerging markets and developing economies.

Make or Buy? Trade-Induced Shifts in Firms' Innovation Behavior

Jiancong Liu (Paris School of Economics (PSE))
Zoe Zhang (University of Tokyo)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6528419

This paper studies how import competition shapes not only the level but also the organization of firm innovation activity. Using matched firm-level financial and patent transaction data for Japanese firms over 2001-2008, we show that exposure to Chinese import competition induces a systematic shift from internal innovation ("Make") toward external technology acquisition ("Buy"). While firms reduce patent applications, they expand patent purchases through the market for technology. This recomposition is accompanied by an improvement in the average quality of acquired technologies and a decline in the quality of internally generated patents, reflecting compositional shifts on both the demand and supply sides of the market for technology. We show that this shift is not driven by financial constraints. Instead, it reflects the asymmetric risk structure of the two modes: internal innovation exposes firms to failure risk that external acquisition does not. Critically, this recomposition is not a benign reorganization of technological activity: firms expanding patent acquisition under competitive pressure experience significantly lower subsequent TFP growth, while those sustaining internal innovation do not. A model of make-or-buy innovation rationalizes these findings and highlights how trade shocks reshape the equilibrium organization of innovative activity.

The Patent Trap: A Historical and Formal Analysis of Why the Patent System Fails Its Inventors

William Roberts (Independent Scholar)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6641059

This paper advances a historical and formal argument that the contemporary patent system does not, in general, help the inventor who creates the invention it is asked to protect. The argument is framed in terms of the Patent Trap: three interlocking structural constraints pre-filing solvency, maintenance solvency, and enforcement capacity-that together determine whether a given inventor can extract positive expected value from a granted patent. Eight historical case studies spanning 1871-2018 (Swan, Baird, Whittle, Flowers, Baylis; Meucci, the Wright Brothers, Farnsworth) motivate the analysis, which is then formalized. The Wealth Ceiling Theorem (Proposition 1) shows that for any inventor whose working capital falls below a critical threshold W*, expected net value from patent pursuit is bounded above, and for sufficiently low wealth is strictly negative, regardless of the gross commercial value of the invention. Two corollaries follow: on the monotonicity of the wealth ceiling in invention value, and on the resulting selection bias in commercialized inventions. An empirical calibration with parameters drawn from Walsh-Lee-Jung and Cohen-Nelson-Walsh demonstrates that for a UK individual inventor filing in three jurisdictions via investor-disclosure-financed capital, no finite invention value produces a positive expected return. The paper closes by specifying a four-condition financing architecture capable of neutralizing the trap using existing financial and legal instruments.

When Machines Innovate: Questioning the Boundaries of Patent Law

Khushi Oberoi (Independent)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6376060

This paper explores the evolving relationship between patent law and artificial intelligence in a clear and accessible manner, making it relevant for students, professors, researchers, and anyone interested in intellectual property. It critically examines whether inventions generated with the assistance of artificial intelligence should qualify for patent protection. If an invention is developed using AI, does granting it patent protection create unfairness toward individuals who rely solely on their own intellectual labor?

Furthermore, does increasing dependence on AI risk diminishing human inventive capacity by encouraging reliance on machines rather than independent reasoning? In light of these concerns, should patent law refuse protection to AI-assisted inventions, or should it adapt to technological advancement and recognize such innovations as a natural evolution of human creativity?

IP Law & Policy

Before Invention

Haris Durrani (Harvard University)
Texas Intellectual Property Law Journal, Volume 34 (forthcoming 2026)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6529638

This article is the first comprehensive historical account of a foundational doctrine of U.S. patent law: conception. Conception supplies the meaning of invention at the root of the patent system. It is a mental act, the formation of the idea of an invention before it is made. Considered “the touchstone of inventorship,” conception can determine who receives a patent, awarding credit and title, and governs employee inventions and federally funded research. Despite conception’s import, courts inconsistently state its doctrinal standard while insisting on its deep historical continuity, and scholars exclude it from studies of patent law’s practice, theory, and history. Carefully reading nearly two centuries of cases and treatises, the Article details the doctrine’s development, reveals its causes and tectonic effects on the patent system, and proposes a new test. Due to conception’s influence across other doctrines, the test transforms the meaning of invention holding aloft the system’s whole architecture.

The conventional wisdom is that the meaning of conception is well-settled, “unchanged for more than a century.” But this Article argues the doctrine has oscillated between a “mentalist” tradition, privileging a general idea in the mind at an early stage of the inventive process, and a “materialist” one, privileging a detailed idea formed amidst the physical work of experimentation. The doctrine developed in three phases, crafted in the nineteenth century with a mentalist theory equating conception with invention; turned materialist in the twentieth, breaking that equation; and, near the twenty-first, reverted to mentalism, albeit unsteadily. Heedless of these conflicting traditions, scholars and judges pick and choose among their divergent doctrinal standards. The result is a modern doctrine as convoluted as its history. Clarity requires understanding the development of the doctrine’s oscillating preferences for ideation and work.

The Article draws two takeaways from this history. First, conception has long provided the meaning of invention underwriting the patent system. This claim counters popular belief in patent law’s early materialism and recasts the modern system as the triumph of conception’s doctrinal development. Conception is thus not only temporally before making an invention, but also ontologically before the very notion of invention – the

first principle of the entire edifice. This conclusion provides a basis for a foundational theory of invention that traverses the many doctrines shaped by conception's doctrinal development.

Second, conception must be reworked to bring back the materialist turn, grounded in experimental labor. The mentalist tradition is flawed, designed to exclude that labor. The Article proposes a new test synthesizing elements from the materialist case law. While scholars have advocated materialist approaches to other doctrines, primarily related to inventorship and a patent application's disclosure, those doctrines were largely shaped by conception's development and should incorporate versions of the proposed conception test, harmonizing divergent theories of invention with their source. The test resolves controversies over federally funded research and artificial intelligence, and the thorny case law on disclosure, the basis of the modern system.

Vibe Coding Authorship

Edward Lee (Santa Clara University - School of Law)
UCLA Law Review Discourse (forthcoming 2026)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6489379

Copyright law faces seismic disruptions caused by artificial intelligence (AI). "Vibe coding"-or a person's use of natural-language prompts to an AI generator for it to write the actual lines of computer code-has led to a copyright contraction. Under the restrictive view of "human authorship" adopted by the U.S. Copyright Office, both the availability and the scope of copyright for computer programs have dramatically narrowed with the greater adoption of vibe coding by both businesses and individuals to create computer programs. Vibe-coded programs are but one example of a much larger phenomenon of copyright contraction affecting a wide array of prompt engineered works, including textual works, visual works, audiovisual works and motion pictures, and music. The Copyright Office's restrictive approach has disqualified these works as uncopyrightable if they were created by a person's "prompts alone." And the Office has imposed a duty on applicants for registration of a work they created to disclaim any AI-generated element.

This essay is one of the first in legal scholarship to analyze the growing problem of copyright contraction for computer programs that few in the software and tech industries even recognize. As an alternative to the Copyright Office's restrictive approach, the essay offers a proposal for how courts should analyze the copyrightability of vibe-coded computer programs. Under the courts' longstanding precedents, people who make an original selection and arrangement of elements through vibe coding including in structuring the modules or architecture of computer programs, or in the visual or audiovisual displays from the program-qualify as authors. But, if authorship is based on selection and arrangement, the scope of copyright is thin, protecting only against near identical copies of the respective works. And, to the extent this thin copyright protection is inadequate, Congress should consider enacting a limited sui generis protection for vibe-coded computer programs. This essay's proposal serves the constitutional goal of promoting progress and incentivizing people to create works for the public's benefit. And it incentivizes businesses to employ human creators instead of seeking to completely automate the production of computer programs by AI agents.

Disaggregating Authenticity: Intellectual Property's Inherent Limits for Indigenous Culture

Michael Goodyear (New York Law School)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6644238

From the Zia Sun Symbol to Mixe textiles, Indigenous culture has long been a target of cultural appropriation. Scholars across law, anthropology, and Indigenous studies have documented how intellectual

property doctrine fails to adequately protect traditional knowledge and traditional cultural expressions from harmful appropriation. In response, advocates have sought to better protect Indigenous creativity. Yet these proposals – including ostensibly sui generis regimes – remain grounded in intellectual property concepts. This continued reliance assumes intellectual property law can be adapted to this purpose without first interrogating whether they are conceptually aligned.

Disaggregating the meanings of authenticity reveals the limits of intellectual property. At present, authenticity remains a socially constructed, shapeless thicket in the legal literature. A taxonomy of authenticity's underlying values is generally lacking, let alone in the context of Indigenous cultural appropriation.

This article centers the perspectives of Indigenous peoples and consumer markets to disaggregate authenticity in this context into four underlying dimensions: uniqueness, creatorship, place, and tradition. The first three share meaningful conceptual overlap with what intellectual property law values and protects. The fourth does not. That gap is not accidental. Intellectual property looks forward, rewarding the new and novel. Tradition looks back, deriving value from historical practice and inherited norms. This structural tension reveals that while intellectual property-oriented reforms could be conceptually aligned with the first three dimensions, protecting Indigenous interests in tradition will require looking beyond intellectual property.

Comparative Law of Cross-Border Patent Infringement: A Jurisprudential Analysis of the United States and Japan

Frank Pham (U.S. Licensed Attorney at Law and Patent Attorney based in Nagoya, Japan)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6462282

Historically, patent enforcement relied on the strict principle of territoriality, a doctrine that is increasingly destabilized by distributed networks, cloud computing, and the placement of servers overseas. This research provides a comprehensive comparative analysis of how the United States and Japan address the jurisprudential challenges of cross-border patent infringement and divided multi-actor infringement within the context of borderless digital architectures. The analysis reveals that the United States has developed a highly categorized, bifurcated framework that applies a "control and benefit" standard to system claims to capture the domestic use of foreign network components, while maintaining a strict geographical boundary for method claims that require every step to be performed within the United States. In stark contrast, Japan has recently executed a historic paradigm shift to abandon rigid geographic formalism, and established a substantive four-factor balancing test to determine whether a cross-border network invention is functionally and economically worked within Japan, effectively eradicating the "server loophole." This resulting jurisprudential asymmetry introduces profound strategic implications for multinational patent prosecution, global forum shopping, and the management of international parallel litigation. Ultimately, these divergent national methodologies underscore an urgent need for legislative action and international harmonization to ensure intellectual property rights remain enforceable across a globalized digital economy.

Copyright Law

Copyright Law and Property Law

Keith N. Hylton (Boston University)
Texas A&M Journal of Property Law
https://scholarship.law.tamu.edu/journal-of-property-law/vol12/iss1/1/

Property is at the core of state law since it is the exclusive power of the individual state governments to define and protect property rights within their jurisdiction. In this paper I will discuss the general connection between copyright and property generally. I will argue that property law sheds important light on copyright law and can help us cut through modern controversies in copyright law. If I am correct in this view, any judge sufficiently familiar with property law doctrines could do better than the Supreme Court of the United States in resolving a new copyright controversy. Specifically, property law can be usefully applied to resolve fair use disputes. Of course, property law alone is not enough to resolve these problems. Courts will also have to determine what constitutes an “invasion” or an “interference” with a copyright. These are matters that turn toward economics.

Protection or Exploitation? AI Copyright Regulation and Endogenous Market Structure

Yiyang Sun (Guanghua School of Management, Peking University; Ross School of Business, University of Michigan)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6438841

Generative AI introduces a fundamental tension in the creative economy: property rights remain undefined at both the input margin of training data and the output margin of generated content. To analyze this dual-margin disruption, we develop a general equilibrium framework featuring AI-adopting art production firms alongside human artists who supply training data, corporate labor, and independent art. We formalize copyright compliance through explicit data royalties and probabilistic judicial enforcement against infringement, yielding three equilibrium regimes: data starvation, interior AI adoption, and no AI adoption. We show that policies that appear to raise artist income on impact may lose much of that force after equilibrium responses operate through market concentration, the reallocation of production and work, and the conversion of nominal income into real welfare. To quantify these margins, we evaluate artist welfare over the full two-dimensional policy space under a maintained post-shock parameterization and then assess the robustness of the results to alternative technological and market conditions and find that in the current parameter environment, real artist welfare is highest under the least restrictive combination of copyright instruments, with both the royalty burden and judicial intervention kept low.

The Cost of Music: Has Digitization Made Copyright Obsolete?

Sean A. Pager (Michigan State University - College of Law)
Eric Priest (University of Oregon School of Law)
NYU Journal of Intellectual Property & Entertainment Law, Volume 15, No. 1, Pp. 225–329 (2025).
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6502799

Commentators have repeatedly claimed that digital technologies render producers and recording engineers effectively obsolete. Supposedly, any DIY musician with a laptop and GarageBand can make home recordings that sound just as good as professionals in a high-end studio. The result is a dramatic reduction in the cost of music and the barriers to entry. As artists increasingly record and release new tracks entirely on their own, commentators hail the democratization of the music industry.

Copyright skeptics have invoked democratization claims to further their own agenda: They argue that because digital democratization has eviscerated music production costs, artists no longer need copyright protection to recoup their up-front investment. As such, sound recording copyrights may no longer be justified.

Our article examines the reality underlying such democratization claims. Harnessing both quantitative and qualitative data, we shed empirical light on a debate hitherto fueled by theory and anecdotes. Our findings call into question the commercial viability of DIY music. We show that instances of genuine DIY music gaining widespread popularity remain rare – roughly 1% of music appearing in the top 200 weekly charts is self-produced by artists.

Our article also provides a qualitative context to explain why DIY recordings have failed to gain traction on commercial charts. Drawing on extensive interviews with music industry insiders, we delve into the complexities of the music recording process and explore the hidden pitfalls that hold DIY artists back. Moreover, contrary to the claims of democratization evangelists, we show that the time and costs required to produce commercially competitive music have not have significantly changed in the digital age. Our findings strongly suggest that copyright skeptics have overstated their case: The rationale for the sound recording copyrights in the digital age remain fundamentally intact.

IP & Trade

Revisiting Compulsory Licensing under TRIPS: National Underspecification and the Erosion of Doha Flexibilities: A Comparative Matrix

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Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6564478

Four structural barriers explain the persistent underutilization of compulsory licensing under the TRIPS Agreement and the 2001 Doha Declaration on TRIPS and Public Health: restrictive under-specification of national patent legislation relative to Doha-confirmed flexibilities; contractual foreclosure of those flexibilities through bilateral TRIPS-plus obligations; procedural complexity in the existing Article 31bis export mechanism; and administrative incapacity in least-developed country jurisdictions. This article develops a doctrinal and comparative legal analysis of each barrier, examining the national patent legislation of Brazil, India, South Africa, Thailand, and China against a five-criteria assessment framework aligned with the full scope of Doha-confirmed flexibilities. Contrary to approaches that emphasize political economy pressures as the primary explanation, this article argues that legal under-specification at the national level is equally determinative and more amenable to direct legislative remedy. A TRIPS-plus obligations matrix is constructed for each jurisdiction, quantifying the degree to which bilateral free trade agreement provisions-particularly data exclusivity, patent linkage, and extended patent terms-erode the flexibility space confirmed by Doha. The article concludes with targeted legislative reform proposals for national patent laws and for the Article 31bis mechanism.

Other Topics

Intellectual Property and the Diffusion of Culture: Evidence from the Luxury Watch Industry

Christophe Gösken (ETH Zurich Center for Law and Economics)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6549498

In 1996, Patek Philippe launched its now-iconic campaign declaring that “You never actually own a Patek Philippe. You merely look after it for the next generation”. Positioned against imagery of intergenerational transmission and the word “GENEVA”, the campaign framed the watch not merely as a luxury object, but as a vessel of tradition, quality, and national identity.

This article argues that intellectual property (IP) law functions as a system of market regulation as well as a form of cultural governance that structures the diffusion of meaning in markets for symbolic goods. Using the Swiss watchmaking industry as a case study, it provides a doctrinal and empirical account of how trademark law, geographical indications, exhaustion, and related legal regimes shape the conditions under which authenticity is recognized, cultural value is stabilized, and reinterpretation becomes either permissible or suspect. In this article, “cultural diffusion” refers to the processes through which status-laden meanings attached to goods are interpreted, imitated, and reworked across social groups.

Drawing on forty-three interviews with industry executives, resale platforms, authentication providers, and policymakers across Europe, Asia, and the Americas, the Article shows how IP rights are strategically deployed to curate origin, stabilize authenticity, and structure cultural transmission over time. It argues that IP law should be calibrated not toward maximal control, but toward preserving the credibility of authenticity signals while maintaining a bounded space for non-deceptive reinterpretation. This dual function invites a reconsideration of IP’s normative foundations in markets where commercial value and cultural meaning are deeply intertwined.

Rethinking Intellectual Property: A Five-Part Architecture for Managing Knowledge Across Contexts

Susan Nancarrow (Southern Cross University - Faculty of Health; HealthWork International)
Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6439838

Contemporary intellectual property (IP) systems are built on a narrow conceptualization of knowledge as discrete, codifiable outputs that can be owned, protected, and transferred. While effective in domains where knowledge can be stabilized into artefacts, this model does not generalize across the full spectrum of contemporary research and innovation-particularly in interdisciplinary, practice-based, and socially-oriented fields. The Ambitious Australia Report (2025) identifies university IP policy as overly complex, risk-averse, and commercially disconnected, but does not provide a diagnostic framework for reform. This paper responds directly to that gap. I introduce the proposition that IP systems are downstream expressions of epistemic architecture: they determine not only how knowledge is owned, but which forms of knowledge can be recognized, stabilized, and valued. Drawing on theories of tacit and embodied knowledge (Polanyi, 1966; Nonaka and Takeuchi, 1995; Collins, 2012), appropriability regimes (Teece, 1986), and the political economy of academic knowledge production (Slaughter and Rhoades, 2009), I propose a five-part analytical architecture-Type, Locus, Flow, Intent, Instrument-the TLFII framework. I show that misalignment across any of these five dimensions predicts specific forms of IP failure. The paper introduces a typology of knowledge migration pathways, a strategic intent matrix, and a governance proposition. It identifies a structural market

failure-the private developer/public buyer asymmetry-for which current IP frameworks provide no adequate instrument, and proposes a performing rights licensing model, adapted from the creative industries, as a structural solution.

Intellectual Property Collateral and the Governance of Innovation Finance

Michael A. Santoro (Santa Clara University)
Colton Vale (Santa Clara University)
Working paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6546920

This article argues that intellectual property collateral is no longer merely a downside protection device in innovation finance. It increasingly functions as a mechanism of creditor governance, shaping restructuring outcomes and influencing whether innovation is preserved within distressed firms or transferred to new owners. As creditors shape whether innovation is preserved, transferred, or abandoned during financial distress, the governance role of intellectual property collateral raises broader questions about how creditor rights should function in innovation-driven sectors. The article proposes three principles for responsible innovation lending: maintaining credible capital discipline, prioritizing innovation continuity, and ensuring fairness and transparency in restructuring decisions.

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