The Theory of Intellectual Property Rights and The Central Debate
Lecture Agenda

Why Have IP Rights?
Basic Economics of IP
The Central Debate in Intellectual Property
Why Have IP Rights?
The Philosophy of Intellectual Property

How are IP Rights Justified?

Natural Rights Theory  Personhood Theory  Utilitarian Theory
To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.
The Utilitarian Basis of IP

IP is Functionalist — A Means to An End
What are the ends?

- Copyright
  Creative Works of Expression
- Patents
  Inventions and Innovation
- Trademarks
  ??
The Utilitarian Basis of IP

What is the Means? (The Mechanism)

Copyright
Creative Works of Expression

Patents
Inventions and Innovation

Trademarks

A grant of rights to exclude others from the scope of the IP right.
(A form of property right.)
IP rights are an interference with the free market. They must be justified — functionally. How?

Won’t creative works be created anyway? Aren’t there already powerful incentives to innovate? Where’s the market failure?
(Basic) Intellectual Property Economics
Invention/Innovation/Creativity is is like ...
Public Goods
Nonrival
Nonexcludable

Underproduced absent intervention — and thus market failure.
Public Goods

How well does this describe what the intellectual property laws protect?
Trademarks are different!

Protecting trademarks = protecting investments in “goodwill”

Investments in goodwill => lower search costs & higher product quality
The Mechanisms of Intellectual Property Rights

How do IP Rights Work?

They allow supra-marginal economic returns.

Competitive market: prices approach marginal cost.
Less competitive market: prices rise above marginal cost.

Note that IP rights are almost never monopolies.
Competitive Equilibrium = \text{Marginal Cost of Production}
Price ($) vs. Quantity (#)

- Competitive Equilibrium
- Monopoly Equilibrium
- IP-Pricing Equilibrium (maybe)

Total Revenue ($ x #)
Price ($) vs. Quantity (#)

- Competitive Equilibrium
- Monopoly Equilibrium
- Total Revenue ($ x #)
- Deadweight Loss

Diagram illustrates the comparison between competitive and monopoly market equilibriums, highlighting the differences in total revenue and the associated deadweight loss.
This is not the only cost of IP!
Monopolization Costs
Rent-Seeking Behavior
Restriction of Future Innovation & Creativity
Administrative Costs
Monopolization Costs
Rent Seeking
Restriction of Future Innovation
Administrative Costs
The Mechanisms of Intellectual Property Rights

The Implications of Granting Property Rights

The economic reward is determined by the market.

The economic reward varies with (one measure of) social value.
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The economic reward is determined by the market. The economic reward varies with (one measure of) social value. Allows for great flexibility, adaptability. (Mostly) a “private ordering” solution.
The Mechanisms of Intellectual Property Rights

The Implications of Granting Property Rights

... but ...
The Mechanisms of Intellectual Property Rights

The Implications of Granting Property Rights

Less competitive markets = deadweight loss.

Granting property rights can stimulate undesirable behavior.

Can harm future activities.

Significant costs of administration, enforcement, politics.
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<thead>
<tr>
<th>Gains</th>
<th>Costs</th>
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<tr>
<td>More innovation/invention/expression/goods</td>
<td>Deadweight Losses</td>
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<tr>
<td>More disclosure</td>
<td>Rent Seeking</td>
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<tr>
<td>More commercialization/products</td>
<td>Restriction of Future Innovation</td>
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<tr>
<td>More investment in invention/expression/creativity</td>
<td>Administrative Costs</td>
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The Key Question

Increasing rights = increasing incentives = increasing costs
we need to strengthen rights!
we need to weaken rights!
Social Benefit

Strength of Rights

... just right! (For now!)
Social Benefit vs. Strength of Rights