The Problem with Intellectual Property

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I. Introduction

It is widely recognized that the institutional protection of private property rights was a necessary (though probably not sufficient)[1] condition for the radical prosperity experienced in the West since the advent of the industrial revolution. These property, or ownership, rights include rights in material, scarce resources, but also so-called "intellectual property" (IP) rights. IP rights include patent and copyright—the most significant types of IP, which emerged in their modern form around the same time as the industrial revolution[2]—as well as trademark, trade secret, and other rights related to creations or products of the intellect.[3]

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* Stephan Kinsella is a libertarian writer and registered patent attorney in Houston, Texas. A former partner with Duane Morris, LLP and General Counsel and VP-Intellectual Property for Applied Optoelectronics, Inc., his publications include *Legal Foundations of a Free Society* (Houston, Texas: Papinian Press, 2023; https://stephankinsella.com/lffs), *Against Intellectual Property* (Auburn, Ala.: Mises Institute, 2008; www.c4sif.org/aip), *Trademark Practice and Forms* (Thomson Reuters, 2001–2013), and Noah D. Rubins, Thomas N. Papanastasiou and Stephan Kinsella, *International Investment, Political Risk, and Dispute Resolution: A Practitioner's Guide*, 2nd ed. (Oxford University Press, 2020).

Most of my own work cited herein may be found online at www.stephankinsella.com and www.c4sif.org. For my other work related to IP, see *Against Intellectual Property*; *Legal Foundations of a Free Society*, Part IV; Stephan Kinsella, *You Can't Own Ideas: Essays on Intellectual Property* (Houston, Texas: Papinian Press, 2023; https://stephankinsella.com/own-ideas/); and my six-lecture Mises Academy course on IP, *idem*, "KOL172 | "Rethinking Intellectual Property: History, Theory, and Economics: Lecture 1: History and Law (Mises Academy, 2011)," *Kinsella on Liberty Podcast* (Feb. 14, 2015; https://stephankinsella.com/as_paf_podcast/kol172-rethinking-intellectual-property-history-theory-and-economics-lecture-1-history-and-law-mises-academy-2011/). For criticism of IP by other writers, see Stephan Kinsella, ed., *The Anti-IP Reader: Free Market Critiques of Intellectual Property* (Houston, Texas: Papinian Press, 2023; https://stephankinsella.com/ip-reader/) and the C4SIF Resources page at www.c4sif.org/resources.

[1] See Hoppe (2021b); see also Hoppe (2022).

[2] See, e.g., Kinsella, ed. (2023, Part I); Hughes (1988, p. 288 *et seq*.).

[3] Patent, copyright, trademark and trade secret have been referred to as the "paradigmatic quarto" of IP rights. Cwik (2016, p. 471) Other legal rights typically classified under the IP rubric include moral rights; semiconductor maskwork protection; boat hull designs; "gathered information" or other informational or database rights; personality, publicity, "name and likeness" and related rights; and others. See Kinsella (March 4, 2011); see also Samuelson (2000, pp. 1147–48); Beitz (2005) (on "moral rights" of creators of artistic and literary works); and Hughes (1988, p. 292).

Although reputation rights, which are protected by defamation law (libel and slander), are not usually considered to be a type of IP, I believe they should be, since arguments in favor of reputation rights (and defamation law) are similar to those given in favor of other forms of IP, like trademark; and because defamation law is also

The idea that IP rights[4] are a legitimate type of property right, and a necessary part of a free market economy, has been taken mostly for granted since the dawn of modern patent and copyright just over two centuries ago. Despite this, defenders of IP still seem somewhat uneasy with it. They make strained arguments that IP is just like, or at least structurally similar to, property rights in physical resources.[5] Yet it is still treated differently than other property rights. For example, patent and copyright have limited terms—about 17 years for the former and usually over 100 years for the latter—unlike the potentially perpetual ownership of traditional forms of property.[6]

Despite its prevalence, IP law has also long had its critics, including free-market economists and anarchists in the nineteenth century.[7] With the rise of the internet, digital technology, and artificial intelligence,[8] proponents of IP claim that it is even more important than ever, while critics maintain that IP is even more absurd in the modern age and its abuses more extreme and common. There is continual dissatisfaction with the state of IP law, with its ambiguities and arbitrary standards, with absurd patents and with copyright bullies threatening speech and freedom of expression. While industries dependent on IP continually lobby for expanding the scope and

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illegitimate, like other forms of IP. See Kinsella (2024a). For further criticisms of defamation law, see Rothbard (1998) and Block (2018).

[4] Technically speaking, "intellectual property" or IP refers to the *interests protected by* various IP rights or laws—to the *object* of the legal right—and is distinct from the IP *rights* granted by IP laws. For example, a patent is an IP right (granted by patent law) that gives the owner of the patent protection over his invention (his IP); a copyright gives the owner the legal right to his creative work (his IP). However, the term "IP" is often used somewhat informally to refer both to the IP right (patent or copyright) and to the thing protected by the IP right (invention, creative work). Thus, someone's patent rights in his invention may be referred to as his IP instead of his IP right *in* his invention. To avoid tedium I will also sometimes use the term IP to refer to IP *rights*, unless the context indicates otherwise. Thus, when I say IP should be abolished I do not mean inventions or artworks (the *objects* of patent rights and copyright rights) should be abolished, but rather that IP law, and the IP rights granted thereby, should be abolished.

I have pointed out something similar regarding imprecise use of the term property in political philosophy, where the word "property" is commonly used to refer to the thing that is the *object* of a property (or ownership) right. However, as one leading scholar has noted:

> In the United States, the word *property* is frequently used to denote indiscriminately either the *objects* of rights … or the *rights* that persons have *with respect to things*. Thus, lands, automobiles, and jewels are said to be property; and rights, such as ownership, servitudes, and leases, are likewise said to be property. This latent confusion between rights and their objects has its roots in texts of Roman law and is also encountered in other legal systems of the western world. *Accurate analysis should reserve the use of the word property for the designation of rights that persons have with respect to things.*

Yiannopoulos (2001, § 1) (citations omitted; last two emphases added). For other concerns about imprecision in the use of metaphors and definitions, see Kinsella (June 12, 2011; 2023c, App. I). On the distinction between possession and ownership, for example, see Kinsella (2023c, notes 28–29 and accompanying text; 2023e, at notes 34–35 and accompanying text; 2023f, n.36).

[5] See Kinsella (2023l, Part IV.I).

[6] Some defenders of IP go so far as to support perpetual terms, such as Lysander Spooner, Andrew J. Galambos, some Randians (though not Rand herself), Robert Wenzel, Victor Yarros, possibly J. Neil Schulman, etc. See, Spooner (1971a, 1971b); discussion of Galambos in Kinsella (2008; April 11, 2022). Re Yarros, see Kinsella (July 11, 2022). See also Kinsella (July 28, 2022a; 2023h); Tucker Feb. 21, 2012); McElroy (2002).

[7] See Kinsella, ed. (2023); Kinsella (July 11, 2022); McElroy (2002); Kinsella (April 13, 2011; April 1, 2011).

[8] See Kinsella (March 19, 2025; Jan. 24, 2025); and other posts collected at https://c4sif.org/category/artificial-intelligence/.

strength of IP rights,[9] there are also continual calls by others for IP reform, for curbs on "misuse" or "abuse" of patent and copyright, for fixing a "broken" system. Left-anarchists and left-libertarians generally oppose IP as type of state-granted monopoly, while others blame patents for outrageous pharmaceutical prices.[10] Many have come to oppose IP outright, including Austrian-influenced libertarians and left-anarchists.[11]

In this chapter I argue that the arguments for IP do not hold up, and that all forms of IP should be abolished entirely, not merely reformed; that IP rights are unjust and incompatible with legitimate property rights.[12]

As a preliminary matter, it is necessary to describe what a just property rights order would look like. I will then scrutinize several common arguments for IP. I conclude that IP rights are inconsistent with the private property order that would characterize any just society. I will follow with a brief discussion of what practices or laws might prevail in the absence of IP.

II. The Private Property Framework[13]

A. Acting Man

Human actors find themselves inhabiting bodies and living in a world of uncertainty and scarcity. There is a continual need for each person to *act* to survive and to achieve desired ends. All action is future-oriented: the actor is dissatisfied with his current status and with the future he believes is coming unless he intervenes. Mises calls this dissatisfication, this motive for acting, "felt uneasiness." Thus, man acts so as to change the future, or rather, to achieve a different future than the one coming.[14] Successful action results in psychic profit and in many cases monetary profit.

All action involves direct control of one's body and possession and employment of other resources to bring about a more desired end than the one that would occur but for his intervention. These resources, sometimes called scarce means of action, are objects that are not part of the actor's body; they are external and previously unowned and unused resources that are *causally efficacious* at changing the course of events so to as achieve the actor's desired end.

B. Posssession, Action, and Property Rights

This need to act and to employ scarce resources as means of action is faced by any actor, even by Crusoe alone on his island. In a social setting there are other people in the world also acting and using resources to achieve their own ends. There are many benefits to living in society—social interaction and intercourse, trade, the division and specialization of labor, and so on. But there is

[9] There is continual lobbying not only to expand the enforcement and scope of existing IP rights, but to create new IP rights such as rights in fashion designs, newspaper headlines, publicity, hyperlinks, news snippets, and so on. See, e.g., references in note 3, above; Kinsella (2024a, n.6); Crouch (July 19, 2023); Kinsella (Oct. 3, 2012; Feb. 1, 2012).

[10] See Kinsella (May 8, 2025); Trump (May 12, 2025).

[11] Including myself, a practicing patent attorney for over thirty years. See Kinsella (July 28a, 2010; April 13, 2011; April 1, 2011).

[12] For some suggestions for IP reforms short of abolition, see Kinsella (Jan. 20, 2010; Feb. 1, 2011).

[13] The issues in this section are elaborated in Kinsella (2023c and 2023d).

[14] See Kinsella (June 28, 2022a).

also the possibility of conflict over the use of scarce resources—both acquired resources and the actor's own body.

For an actor to be able to employ scarce resources successfully, he must be free from conflict or interference by others. I cannot use a field to grow crops if others oust me or take my produce; I cannot use a net to catch fish, or use animal skin as clothes, if others take it. I am not free to choose my own actions or ends if I am killed or coerced and treated as a slave by others. Successful human action requires liberty—freedom from threats or aggression against one's body and from unconsented use of acquired resources (theft, trespass).

One way to reduce the risk of such conflict and to secure one's *possession* of resources is to use technological or other practical means, such as locks, defense, threats, alliances, or other strategies[15]—concerns Crusoe would not have but those living in society do. In society, property rights also emerge as a social and legal institution to further reduce the risk of conflict or interference with the actor's use of his own body and acquired resources. Thus, the scarce resources that are employed as means of action are not only *possessed* by the actor, but also *owned*: he has a property right in, or owns, the resource. Property rights thus emerge as a practical institution that provides *normative support* for the actor's ability to possess and use resources without conflict.[16]

It is important to recognize that rights are necessarily property rights precisely because acting in the world requires physical manipulation by the actor's body of physical, causally efficacious means, and that conflict with another actor is thus itself always physical—it is a clash or conflict over a scarce resource whose nature is such that it cannot be used by both actors at the same time, and whose use is necessarily a physical, real one. Property rights as respected by law, in order to provide normative support for the actor's physical possession and employment of the resource, are also *enforceable*, meaning the law provides for *physical* en*force*ment of its prohibitions.

Essentially, all rights just *are* property rights, and all property rights are the right to *exclude* others from using the owner's resource without the owner's consent.[17] A conflicting use is always a physical use, and exclusion by the owner or by the law is always a physical exclusion of others from using the resource without the consent of the owner. For this reason the object of property rights is always some physical means which can be grasped, possessed, and employed, and which can therefore be the object of conflict and also the object of property rights. In short, only

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[15] One is reminded here of Hoppe's observation that some people, such as aggressors, can sometimes only be treated as technical, not ethical, problems. Hoppe (2006a, pp. 333–334 & 384–386); Kinsella (Jan. 5, 2013).

[16] Kinsella (April 19, 2025; 2024b).

[17] As Professor Yiannopoulos explains:

> *Property* may be defined as an *exclusive right to control an economic good*…; it is the name of a concept that refers to the rights and obligations, privileges and restrictions that govern the relations of man with respect to *things of value*. People everywhere and at all times desire the possession of things that are necessary for survival or valuable by cultural definition and which, as a result of the demand placed upon them, *become scarce*. Laws enforced by organized society control the competition for, and guarantee the enjoyment of, these desired things. What is guaranteed to be one's own is property… [Property rights] *confer a direct and immediate authority over a thing*.

Yiannopoulos (2001, §§ 1, 2) (first emphasis in original; remaining emphasis added). See also La. Civ. Code, art. 477 ("Ownership is the right that confers on a person direct, immediate, and exclusive authority over a thing. The owner of a thing may use, enjoy, and dispose of it within the limits and under the conditions established by law"). See also Kinsella (2023c, App. I). On property as a *right to exclude*, not a right to *use*, see *ibid*., App. I, the section "Property as a Right to Exclude," and references cited in notes 51 and 52.

conflictable things can be the object of property rights, that is, ownable, just as only physical force (manipulation) can be used to wield or employ a resource and just as only the initiation of force can violate bodily property rights.[18]

C. Property Rights Allocation Rules

The purpose of property rights is to support actors in the pursuit of their goals by enabling them to employ resources, including their own bodies, free of physical conflict and interference from other actors. Property rights are inherently *practical*. For this reason legal systems and their corresponding property rights from time immemorial have always exhibited certain core features in the private law, to one degree or another: self-ownership, original appropriation, contractual transfer, and transfers for rectification.

Self-ownership refers to each actor's ownership over his own body, and is reflected in laws and norms that prohibit *aggression*, or the use of another's body without his consent. Libertarians refer to this prohibition as the non-aggression principle, which is the correlative of, or just another way of expressing, self-ownership, i.e. ownership of one's body.[19] In other words, each person directly controls, or *possesses*, his own body (part of his identify; a matter of *description*); and also *owns* it (a normative or prescriptive status). Ownership of one's body differs from ownership of acquired resources, as it is based not on homesteading or acquisition but on one's direct control of one's own body and intimate connection to and identification with one's body. One cannot exist or act without having a body; to be a person is to *be* embodied.

Actors live in the real world and must also use and employ scarce resources—to consume as food, to use as intermediate goods to produce consumer goods, and so on. To use resources, there must be a *first* user; thus property rights systems permit original appropriation of a previously unowned resources by the occupant.[20] To protect the first owner and user in his possession, property rights recognize that he has a better claim than latecomers. Thus possession, a factual matter, is distinguished from ownership, which is a normative matter; ownership is the normative and legal *right* to possess, as opposed to the *fact* of possession. Possession is a matter of description; ownership a matter of prescription.

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[18] On the term "conflictable," see Kinsella (2023l, text at n.29 *et pass.*; Jan. 31, 2022); see also Kinsella (2023c, App. I; 2023d, text at n.10); 2023i, at n.62; 2023j, at n.6; 2023k, n.19. See also the work of Peter Janich who emphasizes the importance of using the hands to manipulate objects as man's mode of interacting with and contacting reality. This emphasizes the crucial importance of physical force in using and possessing resources and supports the libertarian view that all rights are property rights, and that the only way to infringe or violate a property right is by physical invasion. See Hoppe (June 6, 2024); Kinsella (May 8, 2021; June 9, 2011).

[19] See Kinsella (2023c, p. 12, n.4 and accompanying text, and p. 16, text at n.12; 2023i, p. 91; 2023f, p. 359 & 362). As I note in Kinsella (2023c, n.16), "The following terms and formulations may be considered as roughly synonymous, depending on context: aggression; initiation of force; trespass; invasion; unconsented to (or uninvited) change in the physical integrity (or use, control or possession) of another person's body or property."

[20] See Hoppe (2021c, p. 86): "in order to avoid all conflict *from the very beginning of mankind on*, the required norm must concern the *original privatization* of goods (the first transformation of nature-given "things" into "economic goods" and private property)."

And because self-owning actors and possessors and owners of external scarce resources *acquire* previously-unowned scarce resources, they may also lose ownership of an owned thing by either abandoning it or by consensually transferring it to another, by gift or sale, i.e., by contract.

Finally, owned resources may be transferred from the owner to another for purposes of rectification—to compensate the transferee for some tort or injury to the victim by the owner's act of trespass: his use of the body or other owned resource of the victim without his consent.[21]

Thus, in cases of a dispute over a thing, ownership is determined by consulting the core property acquisition rules: *original appropriation*, *contract*, and *rectification*, or, in the case of ownership of someone's body, the principle of self-ownership. The private law of developed, western legal systems, such as the Roman law or the English common law, embody these core principles, more or less consistently. As I noted elsewhere, "The developed legal system of an advanced, free society is the detailed working out of the implications and applications of these basic principles to various practical and recurring situations in human interactions."[22] Libertarians apply and interpret these principles more consistently than others, but a functioning, workable property system must recognize, and historically always has recognized, these principles, even if imperfectly, even if with inconsistencies and exceptions.[23]

III. Flaws with Arguments for IP

According to Dale Nance, IP arguments "generally fall into two broad categories, deontological and consequentialist. The latter category embraces all theories that purport to justify property rights on the basis of the *good consequences* of their legal recognition, as distinct from their *moral rightness*."[24]

The consequentialist argument (sometimes referred to as utilitarian or empirical) is essentially a market failure argument: that without IP, especially patent and copyright, there would

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[21] For further arguments in defense of these property rights and their origin in the fundamental fact of scarcity, and for self-ownership based on direct control and for ownership of external resources by original occupation, see Kinsella (2023c; 2023d; 2023i; 2023f, Parts II.B and II.D); Hoppe (2010, chaps. 1, 2, and 7; 2021c; 2021d).

[22] Kinsella (2023m, pp. xxii). See also Kinsella (2023e, text at notes 14–16):

> There has to be an objective best link. So how does that work out? In Western private law and in libertarianism, which is a far more consistent working out of this, there are basically two types of links—the type of link applied to your body, which is a unique scarce resource; and the type of link applied to external resources in the world, which were previously unowned scarce resources. … [F]or scarce resources in the world … *original appropriation*, *contract*, and *rectification* are basically the only three principles to determine ownership of external resources in case of a dispute. So these four principles—body-ownership due to direct control, with an exception made for forfeiture of this right due to committing aggression, plus the three principles for external resources—are how we determine the best link, and this is the core of all property rights, and of all just law. A developed body of private law, to be just, has to be based on these core principles, and just entails working out the details as the law develops.

[23] As I note elsewhere,

> Protection of and respect for property rights is thus not unique to libertarianism. Every legal system defines and enforces some property rights system. What is distinctive about libertarianism is its particular property assignment rules—its view as to who is the owner of each contestable, conflictable resource, and how to determine this.

Kinsella (2023c, p. 14). See also Kinsella (2023c, p. 13, n.6 and accompanying text; 2023f, Part II.A, at p. 361; 2023g, p. 630, text at n.22; 2023n, p. 691, text at n.49).

[24] Nance (1990, p. 763).

be *too little* technical innovation and artistic creation—a suboptimal amount.[25] The consequentialist approach is implied by the U.S. Constitution's authorization for IP law, which reads:

> The Congress shall have power … 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.[26]

Deontological arguments for IP rights attempt to justify IP rights based on their moral rightness as opposed to the consequences that flow from granting legal recognition to IP rights. As Nance explains, most deontological or "moral rights" arguments for IP

> fall into one of two sub-categories. First, they can be based upon the creator's deserving to own the fruits of her labors. This "labor theory" of property is generally associated with John Locke, whose influence on American thought is undeniable. An alternative theory, less familiar to Anglo-American thought, is that such rights are based upon respecting the creator's extension or reification of personality by the occupation of tangible or intangible things. The "personality theory" of property is most commonly attributed to the German philosopher Hegel and is better established in continental law.[27]

I refer to the major form of this argument as Lockean or Libertarian Creationism, since it is based on the notion that creation of a thing is a one of the sources of ownership. There are also other theories, sometimes overlapping with each other, such as contract-based arguments and those related to fairness, welfare, and culture.[28]

IP proponents often intermingle the deontological, consequentialist, and other arguments such as aspects of Hegel's murky personality theory.[29] Just as advocates for IP often cannot

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[25] Many libertarian proponents of IP are reluctant to acknowledge the market failure aspect of their argument, perhaps because it makes it apparent that they favor state intervention over the free market and private property rights. See Kinsella (June 28, 2022b).

[26] U.S. Constitution, Art. I, Sec. 8, Cl. 8. Nance comments that "the reference to 'securing' (rather than, say, 'granting') the 'right' to authors and inventors suggests a deontological element as well." Nance (1990, p. 763).

[27] Nance (1990, p. 764, citations omitted). I criticize the labor theory of property underlying libertarian creationism in Part III.A, below.

The European reception to the personality justification for IP is one reason continental IP systems often include "moral rights," which, at least until recently, had been less common in Anglo-American jurisdictions. See, on the connection between personality rights in the civil (continental) law and moral rights, Merryman (1976, p. 1025). For a more recent illustration of the application of such principles, see Grant (Feb. 1, 2023); also Palmer (1990, p. 820, n.6 and 841–843).

Tom G. Palmer, who points out that Wilhelm von Humboldt also linked property rights to personality, critiques the personality justification for IP in Palmer (1990, pp. 819–20 and Part III, esp. pp. 843–849). See also Hughes (1988, p. 290): "Properly elaborated, the labor and personality theories together exhaust the set of morally acceptable justifications of intellectual property. In short, intellectual property is either labor or personality, or it is theft.") For additional discussion of the personality justification for IP, see Moore and Himma, 2011, §3.1); Hughes (1988, Part III); Fisher (2001); Menell *et al.* (ch. 1, §A); and Kinsella (2023f, at n.62).

[28] See, e.g., Hughes (1988) (discussing the Lockean and Hegelian justifications); Fisher (2001; April 17, 2023); Soepboer (July 2009, §3.3); Hettinger (1989); Rastogi (Feb. 27, 2021); Banerji (Oct. 24, 2021); Gebray (2013); Moore and Himma (2011, §3).

[29] "Thomas Jefferson's arguments, for example, include assertions about the absence of loss for the creator of a published idea in allowing others to use it, an argument blending the deontological and consequentialist voice …." Nance (1990, p. 763).

distinguish patent, copyright, trademark, and trade secret from each other (and yet support them anyway)[30] so advocates of IP often do not know exactly which argument they are propounding—whether based on utilitarian considerations, incentives, fairness, deserts, intuition, and so on.

I will focus here on the two primary arguments for IP and will briefly discuss contract and fraud arguments for IP.

A. Libertarian Creationism[31]

1. Creators as Owners

It is often said that creation is a source of rights: that the creator of a thing is its owner.[32] A related notion is that someone is entitled to own the "fruits of his labor." Yet creation is not among the sources of property rights identified in Part II.C above.

Creation is not a source of self-ownership because people do not create their own bodies. Creation has nothing to do with self-ownership or ownership rights in one's body. As noted above, ownership of one's body is based on other factors like one's direct control over and identification with one's body (see Part II.C, above). Nor is it seriously argued that mothers own children they produce or create.

As for external, previously-unowned, non-bodily resources: such a resource comes to be owned not by an actor *creating* it but by first *occupying* it.[33] Creation—or production, transformation of existing physical resources[34]—is a source of *wealth*, but it always involves the *transformation* of *already-owned resources* or input factors into a more valuable output configuration. The owner of the transformed materials is already the owner of the materials *before* transformation. His act of transformation does not create new property rights even if it creates wealth in the world. This is why employees in a factory do not own the products they "create." It is why someone who comes to own a previously-unowned thing owns it; he owns it because he occupied, homesteaded, or embordered it, not because he created it. Creation is neither sufficient nor necessary for ownership and property rights. The entire mistaken notion of creation as a source of ownership needs to be discarded.[35]

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[30] Such as the comments made by Warren Orbaugh on the panel mentioned in Kinsella (April 8, 2025).

[31] This is discussed further in Kinsella (May 6, 2025; 2023f, Part III.B; 2023l, Part IV.C).

[32] Some libertarian and other thinkers reason that

> if you own what you create, this is especially true for useful ideas. For example, libertarian philosopher Tibor Machan has stated: "[I]t would seem that so called intellectual stuff is an even better candidate for qualifying as private property than is, say, a tree or mountain." And Objectivist philosopher David Kelley writes: "[T]he essential basis of property rights lies in the phenomenon of creating value… [F]or things that one has created, such as a new product, one's act of creation is the source of the right, regardless of scarcity."

Kinsella (2023f, Part III.B, pp. 386–387; citations and footnotes omitted). See also Kinsella (2023l, Part IV.I, pp. 426–433), criticizing views about "The Structural Unity of Real and Intellectual Property."

[33] See note 20, above.

[34] See note 78, below, and accompanying text.

[35] I am reminded here of this comment by Hoppe: "Hayek's contribution to the socialism debate must be thrown out as false, confusing, and irrelevant." Hoppe (2006b, p. 259); see also Kinsella (2023o, Part III.C; 2023p, text at n.34). See also my comment in Kinsella (2024b):

2. IP Rights as Negative Easements or Servitudes[36]

In fact, assigning property rights based on creation and on the mistaken notion that there can be property rights in ideas necessarily *violates* property rights. Recall that *all* rights are property rights, and all property rights are rights to exclude others from using the resource without consent of the owner. And recall also that in the case of a dispute over a non-bodily resource, the owner, and prevailing party in the dispute, is determined in accordance with principles of *original appropriation*, *contract*, and *rectification*.

Take the case of patent and copyright, in which some owner of resources—such as money, a factory that produces widgets, or a printing press that produces books—is accused by an IP holder of infringing his patent or copyright. The IP right entitles the IP holder either take some of the infringer's owned resources, e.g., money, in the form of damages for "infringement"; or to have the court issue an injunction, backed by *physical* force and threats of imprisonment for contempt, that blocks the infringer from using his owned resources as he sees fit. He might be ordered not to produce a smart phone that has rounded corners too similar to that of Apple's iPhone.[37] He might be ordered not to produce and sell sequels to J.D. Salinger's *Catcher in the Rye*.[38]

But what gives the IP holder the right to take the infringer's money, or to prevent him from using his own factory or printing press as he sees fit? Consider the principles of *original appropriation*, *contract*, and *rectification*. The infringer presumably owns his money, factory, and or printing press by original appropriation or, more likely, by a contractual transfer from a previous owner. The IP holder was not the original occupier or appropriator of these resources, nor did he receive them by contract. He has no contract with the infringer/owner.

What about rectification? If the infringer had committed trespass or some tort against the IP holder—say, an act of theft, or battery—then the infringer would owe restitution or rectification to the IP holder. But by making smartphones similar to an iPhone or books similar to *Catcher in the Rye* the infringer has not committed any act of trespass at all; he is only an *infringer* of artificial, positive IP rights granted by the state, by fiat.

In effect, the state has granted to IP holder what is called in the law a *negative servitude* (or easement) over the resources of the infringer.[39] This allows the IP holder to act, in effect, as a co-

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> It is time to discard promise-based theories of contract, to reject the notion of binding promises and breach of contract, and to develop an improved title-transfer theory of contract (TTTC), under which contracts are viewed not as binding promises but instead as consensual transfers of title to owned resources.

Likewise, it is time to discard the labor theory of property and libertarian/Lockean creationism.

[36] See, on this issue, Kinsella (2023l, Part IV.B).

[37] See Engstrom (March 7, 2017).

[38] Or customers who accidentally bought a copy of a Harry Potter novel before its official publication date might be ordered not to read it; or producers of *Nosferatu* ordered to destroy all copies. See Kinsella (Feb. 3, 2010); Valjak (Apr. 5, 2017); European Innovation Council (March 31, 2025); Scally (Mar. 5, 2022).

[39] See generally *Restatement (Third) of Property: Servitude*s (American Law Institute, 2000, §1.2); La. Civ. Code, arts. 533, 534, 706. The negative easement of IP burdens the owner of some resource, such as a factory or printing press (the servient or burdened estate) but is not in favor of the owner of a dominant estate, as is the case with predial servitudes (La. Civ. Code, arts. 646, 706), but instead is in favor of the holder of the IP right (patent or copyright), so also has aspects of personal servitudes (La. Civ. Code, arts. 533, 534). Negative IP servitudes are best classified as nonapparent, non-consensual negative servitudes that are a hybrid of predial and personal servitudes, and also best classified as incorporeal movables. See Kinsella (June 23, 2011). The nature of IP rights is a bit complicated; blame it

owner of the resources and to prevent certain uses of these resources. Now, keep in mind that negative servitudes are perfectly legitimate if granted by the consent of the owner of the so-called "servient estate"; they are comment as restrictive covenants in neighborhoods. But just as sex with a woman is permissible if she consents, but rape if she doesn't, a consensual negative servitude is legitimate, but a *nonconsensual* negative servitude (patent or copyright) is not.[40]

3. Learning, Emulation, and Knowledge in Human Action[41]

Another way to understand the error in treating information, ideas, recipes, and patterns as ownable property is to consider IP in the context of human action. Mises explains that "[t]o act means: to strive after ends, that is, to choose a goal and to resort to means in order to attain the goal sought."[42] Knowledge and information of course play a key role in action as well. As Mises puts it, "Action … is not simply behavior, but behavior begot by judgments of value, aiming at a definite end and *guided by ideas concerning the suitability or unsuitability of definite means*."[43]

Rothbard further elaborates on the importance of knowledge to *guide* actions:

> There is another unique type of factor of production that is indispensable in every stage of every production process. This is the "technological idea" of how to proceed from one stage to another and finally to arrive at the desired consumers' good. This is but an application of the analysis above, namely, that for any action, there must be some plan or idea of the actor about how to use things as means, as definite pathways, to desired ends. Without such plans or ideas, there would be no action. These plans may be called recipes; they are ideas of recipes that the actor uses to arrive at his goal. A recipe must be present at each stage of each production process from which the actor proceeds to a later stage. The actor must have a recipe for transforming iron into steel, wheat into flour, bread and ham into sandwiches, etc.[44]

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on the creators of IP rights and those who seek to obscure their true nature by calling them "property rights." See Kinsella (2023l, Part IV.I; Dec. 6, 2010).

[40] Thus, the problem with IP rights is not that ideas or information are "not property," but rather that IP rights, like all property rights, *are* rights to scarce resources—but unjust rights because they are allocated arbitrarily and in contravention of the fundamental principles of property allocation rules. See Kinsella (April 23, 2025a). This is why I pointed out long ago that IP rights are based on a "second homesteading rule" that violates the primary property acquisition rule of original appropriation. Kinsella (Sep. 4, 2000); see also Kinsella (2008), the section "Two Types of Homesteading."

[41] For further elaboration on this issue, see Kinsella (2023f, Part III.B; 2023l, Part IV.C; May 6, 2025; Jan. 18, 2011).

[42] Mises (1962, p. 4).

[43] Mises (1998, p. 93).

[44] Rothbard (2009, p. 11). See also Hülsmann (1997, p. 44, emphasis added):

> The quantities of means we can dispose of—our property—are always limited. Thus, choice implies that some of our ends must remain unfulfilled. We steadily run the danger of pursuing ends that are less important than the ends that could have been pursued. We have to choose the supposedly most important action, though what we choose is how we use our property Action means to employ our property in the pursuit of what appears to be the most important ends.… *In choosing the most important action we implicitly select some parts of our technological knowledge for application.*

See also the related discussion in Kinsella (2023q, text at n.32).

Moreover, "[m]eans are necessarily always limited, i.e. scarce, with regard to the services for which man wants to use them."[45] This is why property rights emerged. Use of a resource by one person excludes use by another. Property rights are assigned to scarce resources to permit them to be used productively and cooperatively, and to permit conflict to be avoided. In contrast, ownership of information or ideas that guide action is not necessary (or even possible). For example, two people who each own the ingredients (scarce goods) can simultaneously make a cake using the same recipe.

Material progress is made over time because information is *not* scarce. It can be infinitely multiplied, learned, taught, and built on. The more patterns, recipes, and causal laws that are known, the greater the wealth multiplier as individuals engage in ever-more efficient and productive actions. It is *good* that ideas are infinitely reproducible. There is no need to impose artificial scarcity on ideas to make them more like physical resources, which *are* scarce.[46]

B. Utilitarianism

Utilitarian advocates of IP argue that the "end" of encouraging more innovation and creativity justifies the seemingly immoral "means" of restricting the freedom of individuals to use their physical resources as they see fit. As noted above, they believe free markets fail and provide suboptimal levels of creative goods without a "patch" provided by the legislature. But there are three fundamental problems with justifying any right or law on utilitarian grounds: ethical, methodological, and empirical.

1. Ethical Problems with Utilitarianism

First, let us suppose that wealth or utility could be maximized by adopting certain policies or rules. Even if wealth or utility is increased on net, this still does not show that the law is justifed. Why not take half of Henry Ford's fortune, for example, and give it to the poor? Wouldn't the total welfare gains to the thousands of recipients be greater than Ford's reduced utility? After all, he would still be a billionaire afterwards. Yet theft is still theft. Just because stealing from Ford helps others "more" than it hurts him does not mean it is justified.

Or suppose it would be possible to remove one eye from a seeing man, against his will, and transplant it into a blind man. Now both men can see, leading to an overall utility gain. Most people will recognize that there is something wrong with utilitarian reasoning if it could lead to such results. The goal of law is *justice*, not maximizing utility.[47] This is done by identifying and protecting property rights. This is because justice is just giving someone his due—and what he is due depends on what his rights are.

2. Methodological Problems with Utilitarianism

In addition to ethical problems, utilitarianism is not coherent. It necessarily involves making illegitimate interpersonal utility comparisons, as when the "costs" of IP laws are subtracted

[45] Mises (1998, p. 93).

[46] For elaboration on the ideas discussed in this section, see Kinsella (Jan. 18, 2011, the section "The Structure of Human Action: Means and Ends"; 2023l, Part IV.E; Jan. 6, 2010).

[47] "Justice is the constant and perpetual wish to render every one his due.… The maxims of law are these: to live honestly, to hurt no one, to give every one his due." Thomas, ed. (1975, Book 1, Title 1).

from the "benefits" to determine whether such laws are a net benefit.[48] But not all values have a market price; in fact, none of them do. Mises showed that even for goods that have a market price, the price does not serve as a *measure* of the good's value.[49] This means that it is impossible for the advocate of IP law to ever justify IP in utilitarian terms. Since IP laws clearly violate private property rights as explained in Part III.A.2 above, at least as a *prima facie* matter, no utilitarian argument for IP can ever succeed.

3. The Utilitarians' Burden of Proof

Even if we ignore the ethical and methodological problems with the utilitarian or wealth-maximization approach, the argument for IP still fails, for the proponents of IP have simply failed to meet their burden of proof. And what burden would they have to meet? First, they would need to show that IP rights increase the output of creative goods—innovation and invention, in the case of patent law, and artistic works, in the case of copyright. It is possible that patent law, for example, reduces the amount of innovation in society, and that copyright also reduces the amount of creative works. If *A* invents and patents a new mousetrap then perhaps *B* stops innovating because *A*'s makes it futile; if *B* improves on *A*'s mousetrap it might still violate *A*'s patent, so why would he bother? And perhaps *A*'s innovating activity slows down too because he faces less competition for the duration of the patent and thus has less incentive to continue innovating. It is also possible that *A*'s initial mousetrap innovation was not stimulated at all by the patent incentive, and would have come about anyway.[50]

Second, even if IP law stimulates *some* additional creative works, the IP advocate would need to show that the result of the IP system is a *net* gain in creative works produced—that is, that the value of any additional creative work stimulated by IP rights is greater than the value of innovation that is *lost* as a result of IP law. As an example, suppose some companies innovate more due to patent law but others innovate less, for reasons noted above. That is, that IP law merely distorts and skews innovation and invention and artistic works. It is possible that this is a net loss, not a net gain.[51]

Finally, even if IP rights stimulate more innovation and artistic works than are lost, and even if the net value of this additional innovation is positive, the IP advocate would need to know the *cost* of the IP system itself to know whether it is worth it. And it cannot be denied that the

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[48] On the defects of utilitarianism and interpersonal utility comparisons, see Rothbard (2011b; 2011c); de Jasay 1997, pp. 81–82, 92, 98, 144, 149–51); and other sources cited in Kinsella (2008, at n.40). See also Dworkin (1980a; 1980b).

On scientism and empiricism, see Rothbard (2011d) and Hoppe (2021e). On epistemological dualism, see Mises (1962; 2003); Hoppe (1995; 2021e).

[49] Writes Mises: "Although it is usual to speak of money as a measure of value and prices, the notion is entirely fallacious. So long as the subjective theory of value is accepted, this question of measurement cannot arise." Mises (1953, I.2.1). Also: "Money is neither a yardstick of value nor of prices. Money does not measure value. Nor are prices measured in money: they are amounts of money." Mises (1981, p. 99). See also Mises (1998, pp. 96, 122, 205, 211, 218, and 286).

[50] Kinsella (July 29, 2011; Feb. 2, 2011; Dec. 6, 2011); Easterbrook (1990, pp. 109–110).

[51] See Kinsella (July 3, 2011); and Ridley (2020, p. 347) ("patents tend to favour inventions rather than innovations: upstream discoveries of principles, rather than downstream adaptation of devices to the market.").

patent and copyright systems impose immense costs on society.[52] As an example, suppose the IP system in the US gives rise to $500B worth of additional innovation and creative works, but causes $300B to be lost, for a net gain of $200B; but the IP system imposes other costs of $350B a year, meaning the IP system makes society poorer by $150B a year.[53]

This is what the utilitarian IP advocate would need to show to meet their burden of proof.

4. The Founders' Hunch

IP advocates have no data showing any of these things. The modern patent and copyright systems originated in statutes (the Statute of Monopolies of 1624, in the case of patents; the Statute of Anne of 1710 in the case of copyright)[54] that were themselves the results of state grants of monopoly privilege and censorship.[55] There was no attempt to do empirical studies to show that these systems resulted in a net gain to society!

When the US Constitution of 1789 authorized Congress to enact patent and copyright law (which it did the next year), the Founders did not do empirical studies to show that these IP rights were necessary or produced the claimed results. At most, the Founders only had a *hunch* that copyrights and patents might "promote the Progress of Science and useful Arts"[56]—that the cost of this system would be "worth it." But they had no evidence. A hundred and fifty years later there was still none. (And of course, this assumes the Founders were well-intentioned, which ignores the fact that many of those who stood to benefit from patent and copyright law would be the Founders themselves, many of whom were inventors and authors.)

5. Empirical Data[57]

The free market economists of the mid-19th century rightly began to see IP rights as contrary to the free market, as artificial monopoly privileges, and primarily as interfering with free trade, sparking a huge debate in the 19th century about IP law.[58] There was no "evidence" or

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[52] See Kinsella (2023f, Part III.A; Sep. 27, 2007; Sep. 29, 2010a); Cole (2001, p. 89 *et seq.*).

[53] Kinsella (Mar. 7, 2005).

[54] Statute of Anne 1710; Statute of Monopolies 1624.

[55] Regarding the origins of copyright, see Fogel (2006); Boldrin and Levine (2008, ch. 2); Johnson (2012, p. 625) ("[T]he monopolies now understood as copyrights and patents were originally created by royal decree, bestowed as a form of favoritism and control. As the power of the monarchy dwindled, these chartered monopolies were reformed, and essentially by default, they wound up in the hands of authors and inventors."); Bell 2014, ch. 3). For more on the origins of IP, see Kinsella, ed. (2023, Part I); references in Kinsella (2023s, n.3); and note 2, above.

[56] U.S. Constitution, Art. I, Sec. 8, Cl. 8. See also note 29, above, regarding Jefferson's blending of deontological and consequentialist arguments.

[57] *See* Kinsella (Oct. 23, 2012a; Oct. 23, 2012b).

[58] See Kinsella (2024a, at n.10 and accompanying text); Machlup (1958, Part II.C); Meiners and Staaf (1990, pp. 911–12):

> In the Nineteenth Century, the patent debate was characterized in terms of free trade versus protectionism, with "protectionists" favoring monopoly grants to inventors, and the "free traders" against grants. The free traders lost, but not without some battles. A bill to weaken patents passed the House of Lords in England in 1872. Holland abolished patents in 1869, but reinstated them in 1910. Switzerland, which held out against patents longer than any other European country, adopted patents in 1882. Although several portions of Germany did not adopt patents and Chancellor Bismarck announced his opposition to patents in 1868, uniform patents were adopted for the entire Reich in 1877.

econometric studies showing that IP rights resulted in net wealth. It would surely have been produced if it had existed, since for many years the anti-IP movement was gaining steam, until the "Long Depression" starting in 1873 turned public opinion against free trade, leading the anti-patent movement to collapse and for modern patent systems to eventually become dominant world-wide.[59] It was not until the 1950s, over a century and a half *after* the first modern IP statutes (in 1790),[60] that an attempt was finally made, when the (Austrian!) economist Fritz Machlup was commissioned to do an exhaustive study for the U.S. Senate Subcommittee On Patents, Trademarks & Copyrights. He concluded:

> No economist, on the basis of present knowledge, could possibly state with certainty that the patent system, as it now operates, confers a net benefit or a net loss upon society. The best he can do is to state assumptions and make guesses about the extent to which reality corresponds to these assumptions… If we did not have a patent system, it would be irresponsible, on the basis of our present knowledge of its economic consequences, to recommend instituting one.[61]

And the empirical case for patents has not been shored up at all in the almost seven decades since Machlup's report. As George Priest, professor of law and economics at Yale, wrote in 1986, "[I]n the current state of knowledge, economists know almost nothing about the effect on social welfare of the patent system or of other systems of intellectual property."[62] Similar comments are echoed by other researchers. Wesley Cohen and Stephen Merrill write: "There are theoretical as well as empirical reasons to question whether patent rights advance innovation in a substantial way in most industries. … The literature on the impact of patents on innovation must be considered emergent."[63] French researchers François Lévêque and Yann Ménière, of the Ecole des Mines de Paris, observed in 2004:

> The abolition or preservation of intellectual property protection is… not just a purely theoretical question. To decide on it from an economic viewpoint, we must be able to assess all the consequences of protection and determine whether the total favorable effects for society outweigh the total negative effects. Unfortunately, this exercise [an economic analysis of the cost and benefits of intellectual property] is no more within our reach today than it was in Machlup's day [1950s].[64]

More recently, Boston University Law School Professors (and economists) Michael Meurer and Jim Bessen conclude that on average, the patent system discourages innovation. As they write: "[I]t seems unlikely that patents today are an effective policy instrument to encourage innovation overall" (p. 216). To the contrary, it seems clear that nowadays, "patents place a drag on innovation"

For more on this history, see also Macfie, ed. (1869); Kinsella (June 6, 2023; 2023l, n.79 and accompanying text).

[59] See Kinsella (2023l, n. 79); Machlup (1958, p. 26). As explained in Machlup and Penrose (1950), and as summarized in Machlup (1958), free market economists began to object to the patent system in the mid-1800s, leading some countries to repeal or delay adopting patent laws. The primary criticism was that protectionist patent grants are incompatible with free trade. However, the "Long Depression" starting in 1873 turned public opinion against free trade, leading the anti-patent movement to collapse and for modern patent systems to eventually become dominant world-wide. See also, on this, Meiners and Staaf (1990, pp. 911–12).

[60] See Patent Act of 1790 and Copyright Act of 1790.

[61] Machlup (1958, pp. 79–80).

[62] Priest (1986).

[63] Cohen and Merrill (2003, p. 3).

[64] Lévêque and Ménière (2004, p. 102).

(p. 146). In short, "the patent system fails on its own terms" (p. 145).[65] Law professor Andrew Torrance and informatics professor Bill Tomlinson opine that "little empirical evidence exists to support" the assertion that the patent system spurs innovation.[66]

And in a 2013 paper, economists Michele Boldrin and David Levine, authors of the influential *Against Intellectual Monopoly* (Boldrin and Levine 2008), conclude:

> The case against patents can be summarized briefly: there is no empirical evidence that they serve to increase innovation and productivity.… This disconnect is at the root of what is called the "patent puzzle": in spite of the enormous increase in the number of patents and in the strength of their legal protection, the US economy has seen neither a dramatic acceleration in the rate of technological progress nor a major increase in the levels of research and development expenditure…
>
> Our preferred policy solution is to abolish patents entirely to find other legislative instruments, less open to lobbying and rent seeking, to foster innovation when there is clear evidence that laissez-faire undersupplies it.[67]

And, from 2017, economist Heidi L. Williams concluded: "To summarize, evidence from patent law changes has provided little evidence that stronger patent rights encourage research investments…."[68]

In sum, there is no unambiguous empirical evidence in favor of patent or copyright, and much pointing against. The proponents of IP rights have failed to meet their burden of proof. The Founders' hunch about IP was wrong. Copyright and patent are not necessary for creative or artistic works, invention, and innovation. IP rights do not even encourage intellectual creation. If anything, the evidence supports the common sense notion that IP rights do nothing but distort and impede innovation and artistic creativity like any state interference with the market and property rights would be expected to do. These monopoly privileges enrich some at the expense of others, distort the market and culture, and impoverish us all.[69] Given the available evidence, anyone who accepts utilitarianism should be *opposed* to patent and copyright.[70]

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[65] Bessen and Meurer (2008).

[66] Torrance and Tomlinson (2009, pp. 132 & 166).

[67] Boldrin and Levine (2013).

[68] Williams (Jan. 2017).

[69] See, e.g., Kinsella (Aug. 1, 2010; July 3, 2011); Ridley (2020, p. 347).

[70] Another problem with the wealth-maximization approach is that it has no logical stopping point. If adding (and increasing) IP protection is a cost worth paying to stimulate additional innovation and creation over what would occur on a free market—that is, if the amount of innovation and creation absent IP law is not enough, then how do we know that we have enough now, under a system of patent and copyright? Maybe the penalties or terms should be increased: impose capital punishment, triple the patent and copyright term. And what if there still is not enough? Why don't we expropriate taxpayer funds and set up a government award or prize system, like a huge state-run Nobel prize with thousands of winners, to hand out to deserving innovators, so as to incentivize even more innovation? Incredibly, this has been suggested, too—even by Nobel Prize winners. See Kinsella (Nov. 23, 2008; Aug. 12, 2008).

C. Contract and Fraud Arguments for IP

1. Fraud and Plagiarism

In addition to deontological and consequentialist arguments for IP, many defenders of IP argue that some forms of IP, such as trademark, patent, and copyright, can be justified on fraud, plagiarism, or other grounds.

Just as many defenders of IP do not carefully distinguish the types of IP rights from each other—which is no surprise many of these rights are arbitrary, confusing, arcane, and legislated—they also conflate the artificial offense of IP infringement with theft and other activities such as piracy, plagiarism, dishonesty, misrepresentation, and even fraud. These arguments are almost always incoherent and based on false assumptions and misdescriptions of IP rights and other matters. For one thing, IP infringement is *not theft*. It is *infringement*, which is an artificial term simply meaning a violation of positive legal IP rights.[71] Nor does IP have anything to do with fraud, dishonesty, misattribution, or plagiarism.

For example, trademark infringement does not require the "victims" to be defrauded, or even confused. This is why the sale of a fake Chanel purse or fake Rolex watch to a customer who is aware that it is a fake is still considered trademark infringement.[72] If I sell an identical copy of the latest Harry Potty novel, I am not plagiarizing it since I am not purporting to be the author. Likewise, if sell copies of a Harry Potter novel and remove J.K. Rowling's name and replace it with my own, it is still copyright infringement. And if I sell *Tom Sawyer*, which is now out of copyright, with my name on it instead of that of Mark Twain, it is dishonest and plagiarism, but not copyright infringement (nor is it even fraud since that work is so well known that no one would be deceived; and if they were, it would be covered by fraud law, not by copyright). Copyright infringement has nothing to do with misattribution, fraud, plagiarism, or dishonesty. If I write a paper in college and fail to give appropriate attribution for quotes from others' works, this may or may not be copyright infringement (usually not), but it is plagiarism, which is a private contractual or ethical matter between student and school that has nothing to do with IP law. None of these confused arguments attempting to justify IP make any sense.

2. IP by Contract[73]

Others argue that some form of copyright or patent could be created by contractual techniques—for example, by selling a patterned medium (book, CD, etc.) or useful machine to a buyer on the condition that it not be copied or revealed to others. It is argued that this could somehow bind not only the parties to the contract but even third parties, thus producing restrictions similar to those of patent and copyright law. But this argument is deeply flawed.

Keep in mind property rights are *in rem* rights good against the world, as opposed to contract rights which are *in personam* rights only—rights as between the parties to the contract. It is illegal for you to attack my body, invade my home, or steal my car not because we have an

[71] See Kinsella (April 23, 2025b; Jan. 9, 2012).

[72] Kinsella (2024a, pp. 285–287).

[73] I discuss problems with the contractual argument for IP in Kinsella (2008, pp. 51–55; April 20, 2025; 2023f, Part III.C; 2023l, n.46; June 13, 2021; 2023t, text at n.52; Jan. 8, 2025). See also Wendy McElroy's perceptive comments on this issue in Kinsella (March 19, 2013); also Bouckaert (1990, pp. 795 & 804–805).

agreement but because my property rights are *in rem*—good against the whole world. By contrast, as I have pointed out before, "Obligations that flow from binding agreements, or contracts, only bind the parties to the contract. The relationship between parties to a contract is like a private law that applies only to them, not to the world at large."[74] A contract is the "law between the parties" and does not bind third parties, who are not in "privity" with the original seller.[75]

For a contractual scheme to emulate IP rights such as patent or copyright, the contract would have to bind not only seller and buyer, but all third parties as well. The contract between buyer and seller cannot do this—it binds only the buyer and seller. Rothbard argues otherwise, using the following example.

> suppose that Brown allows Green into his home and shows him an invention of Brown's hitherto kept secret, but *only* on the condition that Green keeps this information private. In that case, Brown has granted to Green not absolute ownership of the knowledge of his invention, but *conditional* ownership, with Brown retaining the ownership power to disseminate the knowledge of the invention. If Green discloses the invention anyway, he is violating the residual property right of Brown to disseminate knowledge of the invention, and is therefore to that extent a thief.
>
> … A common objection runs as follows: all right, it would be criminal for *Green* to produce and sell the Brown mousetrap; but suppose that someone else, Black, who had not made a contract with Brown, happens to see Green's mousetrap and then goes ahead and produces and sells the replica? Why should *he* be prosecuted? The answer is that, as in the case of our critique of negotiable instruments, no one can acquire a *greater* property title in something than has already been given away or sold. Green did not own the total property right in his mousetrap, in accordance with his contract with Brown—but only all rights except to sell it or a replica. But therefore Black's title in the mousetrap, the ownership of the ideas in Black's head, can be no greater than Green's, and therefore he too would be a violator of Brown's property even though he himself had not made the actual contract.[76]

Rothbard's argument is flawed. First, it presupposes *knowledge* can be owned, which is question-begging and also simply false. As argued above (see Part Part II.B and Part III.A.3), all property rights are rights in scarce, conflictable resources. The means of action are distinct from the *knowledge* that *guides* action. Rothbard himself, as quoted in Part III.A.3, clearly recognizes the importance of knowledge in *guiding* actions; without technological ideas, plans, or "recipes," the actor could not *act* to *transform* "iron into steel, wheat into flour, bread and ham into sandwiches,

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[74] Kinsella (2024b, text at n.3). For further discussion of the libertarian approach to contract law, see *ibid.*, and Kinsella (2023u).

[75] See Kinsella (2023f, Part III.C; (2023t, text at n.52). Similarly, under the international law meta-rule *pacta sunt servanda* (contracts are to be observed), contracts (treaties) between states create a "law of the agreement" between the parties. See Rubins *et al.* (2020, ¶2.38).

Note that in the title-transfer theory of contract of Rothbard and Evers, and as I have further developed it, contracts do not result in binding promises or enforceable obligations, but only in transfers of title to owned resources. However, the differences between the title-transfer and conventional approaches to contract do not make a difference for purposes of the analysis here.

[76] Rothbard (1998, p. 123). Many, many others make similar arguments for IP by contract, all equally flawed. See, e.g., Kinsella (June 13, 2021; April 28, 2019). Schulman also seems to think that IP, or "logorights," is somehow "an intellectual artifact of contract law." See Kinsella (2023h).

etc."[77] He observes that he uses his *knowledge* and *technological ideas* to tell him how to *use* and *rearrange* scarce means.[78] But, as Mises pointed out, "[m]eans are necessarily always limited, i.e. scarce, with regard to the services for which man wants to use them."[79] But this is *not* true of knowledge that guides action.[80] There can be no property rights in knowledge.

Let us grant that Green uses his knowledge of Brown's mousetrap to make replicas, and that this somehow imparts to Black the knowledge of the mousetrap's design: either he buys a copy from Green, or he *observes* Green's replica, or perhaps Green just tells Black or posts the information on the internet.[81] Rothbard says that "the ownership of the ideas in Black's head, can be no greater than Green's." But Black does not need to "own" ideas to use them; in fact, ideas and knowledge *cannot* be owned; knowledge only *guides* action. In this case, it could guide Black in making his own mousetrap. Not only does Black not have a contract with Brown (or even Green), he might not even have ever bought or even touched a copy of Green's replica. He might only have observed it. Or maybe Green told White, and White told Black. When Black uses knowledge he possesses (but does not own!) to make a mousetrap, he in no way violates any contract or property rights of Brown.

As another example I have given before to show the absurdity of the IP-by-contract argument, suppose an author sells physical copies of his books on Amazon, and Amazon requires any buyer to agree not to use or copy the book that he buys, and further, to agree to make any subsequent buyer of the book sign a similar agreement. It is hard to imagine such a practice being viable, for a couple reasons. First, to ensure compliance, the contract will have to impose some kind of penalty payment on the buyer in the event he breaches the contract.[82] Now if it is small penalty, such as one dollar, then many buyers will simply pay the "fine" and copy the book. So the penalty needs to be large to deter buyers from making copies.

But few buyers would pay $20 or so for a book and also obligate themselves to potentially millions of dollars of liability if they copy or impermissibly use the book. Instead, in a world without copyright, where "pirated" books are readily available, the buyer would simply avoid Amazon and

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[77] Rothbard (2009, p. 11). See also Kinsella (Sep. 29, 2010b; Nov. 16, 2009).

[78] Rothbard (2009, pp. 3–4); Kinsella (Sep. 29, 2010b). See also Proudhon (1868, p. 11):

> The masters of science instruct us all—and the supporters of literary property are the first to argue this—that man does not have the capability of creating a single atom of matter; that all his activity consists of appropriating the forces of nature, of channeling these and modifying their effects, of composing or decomposing substances, of changing their forms, and, by this steering of the natural forces, by this transformation of substances, by this separation of elements, of making nature [la création] more useful, more fertile, more beneficial, more brilliant, more profitable. So that all human production consists (1º) of an expression of ideas; (2º) a displacement of matter.

See also further quotes from Proudhon in Kinsella (2023f, n.84).

[79] Mises (1998, p. 93).

[80] Kinsella (2023l, Part IV.E and n.59), discussing Hayek's comments about how the accumulation of a "fund of experience" helps aid human progress and the creation of wealth. See also Kinsella (2023q, the section "Replication and Civilization" and text at n.24).

[81] See related discussion in Kinsella (Jan. 8, 2025).

[82] In my version of the title-transfer theory of contract, there is no such thing as "breach of contract"; however, a conditional title transfer can be arranged that the buyer has to pay the seller if he performs a specified action, such as copying the book. See Kinsella (2024b). This can be referred to as "liquidated damages" and has the same effect as breach of contract, which also results in an award of monetary "damages," since specific performance is almost never awarded.

its onerous contract and just obtain a cheaper or free copy online or from some other publisher. Obviously, this kind of business model is impractical.

But let's assume the business model somehow works and there are many buyers of the book who have agreed not to copy it. Still, if one of them copies it an uploads a copy to the internet, third parties could download the file and print and sell copies of it, since (a) they have no contract with Amazon or the author (or the buyer) and (b) they do not *need* anyone's permission to do this since *knowledge and information cannot be owned*.

In rem intellectual property rights cannot flow from contracts.

D. IP, Legislation, and the State

One final flaw with IP, especially patent and copyright, can be mentioned briefly here. Patent and copyright are statutory schemes, schemes that can be constructed only by legislation, and therefore *have always* been constructed by legislation.[83] A patent or copyright code could no more arise in the decentralized, case-based legal system of a free society than could the Americans with Disabilities Act or Medicare. IP requires both a legislature and a state. For libertarians or others who reject the legitimacy of the state,[84] or legislated law,[85] this is yet another argument against patent and copyright.

IV. Imagining an IP-Free World

As argued above, it is fairly straightforward to explain what is wrong with IP, once the nature and purpose of property rights, and the nature of IP rights, us understood: patent and copyright are artificial state-granted monopoly privileges that undercut and invade property rights. But the consequentialist and utilitarian mindset is so entrenched that even people who see the ethical problems with IP law sometimes demand that the IP opponent explain how innovation would exist in an IP-free world. How would authors make money? How would blockbuster movies be funded? Why would anyone invent if they could not get a patent? How could companies afford to develop pharmaceuticals if they had to face competition?

When I see such demands and questions, I am reminded of John Hasnas's comments in his classic article "The Myth of the Rule of Law." After arguing against the state and for anarchy, Hasnas observes:

> What would a free market in legal services be like?
>
> I am always tempted to give the honest and accurate response to this challenge, which is that to ask the question is to miss the point. If human beings had the wisdom and knowledge-generating capacity to be able to describe how a free market would work, that would be the strongest possible argument for central planning. One advocates a free market not because of some moral imprimatur written across the heavens, but because it is impossible for human beings to amass the knowledge of local conditions and the predictive capacity necessary to effectively organize economic relationships

[83] Kinsella (Nov. 24, 2010).
[84] See Kinsella (2023f, Part II.F; 2023r); also Hasnas (2024); Narveson (2002); Hoppe (2001).
[85] See Kinsella (2023o).

> among millions of individuals. It is possible to describe what a free market in shoes would be like *because we have one*. But such a description is merely an observation of the current state of a functioning market, not a projection of how human beings would organize themselves to supply a currently non-marketed good. To demand that an advocate of free market law (or Socrates of Monosizea, for that matter) describe in advance how markets would supply legal services (or shoes) is to issue an impossible challenge. Further, for an advocate of free market law (or Socrates) to even accept this challenge would be to engage in self-defeating activity since the more successfully he or she could describe how the law (or shoe) market would function, the more he or she would prove that it could be run by state planners. Free markets supply human wants better than state monopolies precisely because they allow an unlimited number of suppliers to attempt to do so. By patronizing those who most effectively meet their particular needs and causing those who do not to fail, consumers determine the optimal method of supply. If it were possible to specify in advance what the outcome of this process of selection would be, there would be no need for the process itself.[86]

In other words: the answer such a challenge might be, as Leonard Read said, "I don't know."[87]

To return to the current subject: with the advent of state IP legislation, the state has interrupted and preempted whatever other customs, business arrangements, contractual regimes and practices, and so on, that would no doubt have arisen in its absence. So it is natural for those accustomed to IP to be a bit nervous about replacing the current flawed IP system with … nothing. With a vacuum. It is natural people to wonder, "Well, what would occur in its absence?" As noted above, the reason we are not sure what an IP-free world would look like is that the state has snuffed out alternative institutions and practices.

Consider the analogous situation in which the FCC preempted and monopolized the field of property rights in airwaves just as they were starting to develop in the common law. Nowadays people are used to the idea of the state regulating and parceling out airwave or spectrum rights and might imagine there would be chaos if the FCC were abolished. Still, we have some idea as to what property rights might emerge in airwaves absent central state involvement.[88]

In any case, because people are bound to ask the inevitable, we IP opponents sometimes try to come up with some predictions and solutions and answers. Thus, in the end we must agree with Hasnas:

> Although I am tempted to give this response, I never do. This is because, although true, it never persuades. Instead, it is usually interpreted as an appeal for blind faith in the free market, and the failure to provide a specific explanation as to how such a market would provide legal services is interpreted as proof that it cannot. Therefore, despite the self-defeating nature of the attempt, I usually do try to suggest how a free market in law might work. (pp. 226–227)

So, how would content creators be rewarded in an IP-free market? First, we must recognize that what advocates of IP want is a world where competition is tamed. Their view is that:

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[86] Hasnas (1995, p. 226).

[87] Read (Nov. 2, 2011).

[88] For more on this see Kelley and Donway (1985) and Kinsella (Aug. 9, 2009).

> Governments adopt intellectual property laws in the belief that a privileged, monopolistic domain operating on the margins of the free-market economy promotes long-term cultural and technological progress better than a regime of *unbridled competition*.[89]

Thus, they favor the grant of monopolies by the state that shelter various market actors from competition. But in a free society with no IP rights, content creators and innovators would face competition just as others do.

It must be recognized that the position of the creator of content that is easily copied or imitated is no different in kind from that of any other entrepreneur on the market. Every producer faces competition. If a given entrepreneur makes profit, competitors notice this and start to compete, eroding the initial profits made. Thus market actors continually seek to innovate and find new ways to please consumers in the pursuit of elusive profits. Most producers face a variety of costs, including costs of exclusion. For example:

> Movie theaters, for example, invest in exclusion devices like ticket windows, walls, and ushers, all designed to exclude non-contributors from enjoyment of service. Alternatively, of course, movie owners could set up projectors and screens in public parks and then attempt to prevent passers-by from watching, or they could ask government to force all non-contributors to wear special glasses which prevent them from enjoying the movie. "Drive-ins," faced with the prospect of free riders peering over the walls, installed—at considerable expense—individual speakers for each car, thus rendering the publicly available visual part of the movie of little interest …. The costs of exclusion are involved in the production of virtually every good imaginable.[90]

What this means is that it is the responsibility of entrepreneurs whose products are easily imitated to find a way to profit, and that they may not use state force to stop competitors. In a sense, this is already the situation facing content creators. Piracy is real and is not going away, unless the big media special interests succeed in having the Internet shut down. Even in the face of widespread file sharing and disregard for copyright, creativity is at an all time high.[91] The only solution to piracy and file sharing is to offer a better service.[92] For example, offering DRM-free movies or music for a reasonable price, as comedian Louis C.K. did, earning $1M in about two weeks.[93] Or use crowd-source fundraising mechanisms like Kickstarter—computer game company Double Fine Productions recently used Kickstarter to raise $400,000 to fund a new adventure game ($300,000 for game development, and $100,000 to make a documentary about the process). In fact, as of this writing, $1,095,783 had been raised, from 28,921 backers, in *one day*.[94]

And there are a variety of tactics people can adopt in different industries. A singer or musician can garner fans from his recordings, even if they are distributed for free, and charge fees for concerts. Movie studios can sell tickets to movies that have advantages over home viewing, such as better sound, 3D, large screens, and the like. Most non-fiction authors—such as bloggers or law professors publishing law review articles for free—do not get paid now, but engage in this activity

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89 Reichman (1995, p. 475, emphasis added); see also Kinsella (July 19, 2011).
90 Palmer (1989, pp. 284–85); see also Kinsella (2008, n.67).
91 Masnick (Feb. 12, 2012).
92 See, e.g., Masnick (Feb. 6, 2012; Tassi (Feb. 3, 2012).
93 Kinsella (Dec. 22, 2011).
94 See Kickstarter (2012). See also Masnick (Feb. 9, 2012); Orland (Feb. 9, 2012).

to enhance their reputation and employability, for ad revenues, or for other reasons. A novelist could become popular with her first few books and then get fans to pre-purchase the sequel before releasing it or get paid to be a consultant on/endorser of a movie version.[95]

We cannot forecast all the ways human entrepreneurial creativity will discover to profit and flourish in a free society with no state-granted protections from competition. But there is every reason to think that in a private-law society, we would be unimaginably richer and freer, with more diversity and intellectual creativity than ever before. The state is nothing but a hindrance to everything good about human society.

V. Conclusion

The purpose of property rights is to assign ownership rights so as to permit peaceful, cooperative, and productive use of scarce resources. In the case of one's own body, the primary ownership principle is self-ownership of one's own body and its bodily integrity (non-aggression). For external, non-bodily, previously-unowned resources, property rights are allocated and determined according to the principles of *original appropriation* (occupation; homesteading), *contractual title transfer*, and *rectification*.

So-called IP rights such as patent and copyright are monopoly privileges granted by the state that dilute and undermine property rights in scarce resources and which are contrary to the principles of original appropriation, contractual title transfer, and rectification. In effect, IP rights are nonconsensual negative easements that *violate* property rights. Thus, IP rights are incompatible with genuine private property rights, liberty, and justice, and distorts and impedes artistic creation and innovation. In addition, utilitarian arguments in favor of IP are fallacious in terms of ethics, methodology, and evidence, and IP rights cannot be generated from private contractual arrangements.

References

American Law Institute (2000). *Restatement (Third) of Property: Servitude*s. Philadelphia, PA: American Law Institute Publishers

Banerji, Oishika (Oct. 24, 2021). "Theories of protection of intellectual property rights." *IPleaders.in Blog.* https://perma.cc/M2BU-T7BC

Bell, Tom W. (2014). *Intellectual Privilege: Copyright, Common Law, and the Common Good*. Arlington, Virginia: Mercatus Center. https://perma.cc/JLC2-396Y

Beitz, Charles R. (2005). "The moral rights of creators of literary and artistic works." *J. Pol. Phil*. 13: 330–58

Bessen James and Michael J. Meurer (2008). *Patent Failure: How Judges, Bureaucrats, and Lawyers Put Innovators at Risk*. Princeton University Press

Block, Walter E. (2018). "The Slanderer and Libeler." In *Defending the Undefendable*. Auburn, Ala.: Mises Institute, 2018. https://mises.org/library/defending-undefendable

Boldrin, Michele and David K Levine (2008). *Against Intellectual Monopoly*. Cambridge University Press. www.againstmonopoly.org

—— (2013). "The Case Against Patents." *J. Econ. Perspectives* 27 no. 1: 3–22. https://perma.cc/Q5NT-9CGA

[95] Kinsella (Jan. 23, 2012; July 28, 2010b; Aug. 9, 2010; 2014).

Bouckaert, Boudewijn (1990). "What is Property?" *Harv. J. L. & Pub. Pol'y* 13, no. 3: 775–816
C4SIF (2025). C4SIF Resources; www.c4sif.org/resources
Cohen, Wesley M. and Stephen A. Merrill (2003). "Introduction." In Cohen & Merrill, eds., *Patents in the Knowledge-Based Economy*. https://perma.cc/XS4J-MVT7
Cole, Julio H. (2001). "Patents and Copyrights: Do the Benefits Exceed the Costs?" *J. Libertarian Stud*. 15, no. 4: 79–105. https://mises.org/library/patents-and-copyrights-do-benefits-exceed-costs-0
Copyright Act of 1790, https://en.wikipedia.org/wiki/Copyright_Act_of_1790
Crouch, Dennis (July 19, 2023). "A National Right of Publicity: the Federal Anti-Impersonation Right (FAIR)." *Patently-O*. https://patentlyo.com/patent/2023/07/national-publicity-impersonation.html
Cwik, Bryan (2016). "Property Rights in Non-rival Goods." *J. Pol. Phil*. 24, no. 4, pp. 470–486
de Jasay, Anthony (1997). *Against Politics: On Government, Anarchy, and Order*. London: Routledge
Dworkin, Ronald M. (1980a). "Is Wealth a Value?" *J. Legal Stud*. 9, no. 2: 191–226. https://perma.cc/6WS4-LPPB
—— (1980b). "Why Efficiency? — A Response to Professors Calabresi and Posner." *Hofstra L. Rev*. 8, no. 3: 563–590. https://scholarlycommons.law.hofstra.edu/hlr/vol8/iss3/5/
Easterbrook, Frank H. (1990). "Intellectual Property Is Still Property." *Harv. J.L. & Pub. Pol'y* 13, no. 1: 108–118. https://chicagounbound.uchicago.edu/journal_articles/309/
Engstrom, Evan (March 7, 2017). "In Apple v. Samsung, SCOTUS Sided With Reason Over Rounded Corners." *Morning Consult*. https://morningconsult.com/opinions/apple-v-samsung-scotus-sided-reason-rounded-corners/
European Innovation Council and SMEs Executive Agency (March 31, 2025). "Nosferatu: the copyright-infringing masterpiece that ruined a film studio." IP Helpdesk, European Commission. https://perma.cc/TV6S-D9QP
Fisher, William (2001). "Theories of Intellectual Property." In Stephen Munzer, ed., *New Essays in the Legal and Political Theory of Property.* Cambridge University Press. https://perma.cc/4YLX-P8JF
—— (April 17, 2023). "IP Theory." https://perma.cc/Y48K-HCTV
Fogel, Karl (2006) "The Surprising History of Copyright and The Promise of a Post-Copyright World." *Question Copyright*. https://perma.cc/DV92-TEH3
Gebray, Kahsay Debesu (2013). "Justifications for Claiming Intellectual Property Protection in Traditional Herbal Medicine and Biodiversity Conservation: Prospects and Challenges." *WIPO-WTO Colloquium Papers* vol. 4. https://perma.cc/3TXQ-LNFX
Grant, Daniel (Feb. 1, 2023). "Artist's lawsuit against school that sought to cover up his murals heads to appeals court." *The Art Newspaper*. https://perma.cc/9EE3-49SA
Hasnas, John (1995). "The Myth of the Rule of Law." *Wis. L. Rev*. 1995, no. 1: 199–234. https://perma.cc/HG7Y-ZG87
—— (2024). "The Obviousness of Anarchy." In *Common Law Liberalism: A New Theory of the Libertarian Society.* Oxford University Press. https://stephankinsella.com/2025/04/hasnas-on-common-law-anarchy-etc/);
Hettinger, Edwin C. (1989). "Justifying Intellectual Property." *Philosophy & Public Affairs* 18, no. 1: 31–52
Hoppe, Hans-Hermann (1995). *Economic Science and the Austrian Method.* Auburn, Ala.: Mises Institute. www.hanshoppe.com/esam
—— (Dec. 31, 2001). "Anarcho-Capitalism: An Annotated Bibliography." *LewRockwell.com.* https://archive.lewrockwell.com/hoppe/hoppe5.html
—— (2006a). *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy.* Auburn, Ala.: Mises Institute. https://hanshoppe.com/eepp/
—— (2006b). "Socialism: A Property or Knowledge Problem?" In Hoppe (2006a)
—— (2010). *A Theory of Socialism and Capitalism: Economics, Politics, and Ethics*. Auburn, Ala.: Mises Institute. www.hanshoppe.com/tsc

—— (2021a). *The Great Fiction: Property, Economy, Society, and the Politics of Decline*. Second Expanded Edition. Auburn, Ala.: Mises Institute. www.hanshoppe.com/tgf
—— (2021b). "From the Malthusian Trap to the Industrial Revolution: An Explanation of Social Evolution." In Hoppe (2021a)
—— (2021c). "Of Common, Public, and Private Property and the Rationale for Total Privatization." In Hoppe (2021a)
—— (2021d). "The Ethics and Economics of Private Property." In Hoppe (2021a)
—— (2021e). "In Defense of Extreme Rationalism." In Hoppe (2021a)
—— (Jan. 20, 2022). PFP041 | Hans-Hermann Hoppe, From the Malthusian Trap to the Industrial Revolution: An Explanation of Social Evolution (PFS 2009). *Property and Freedom Podcast*. https://propertyandfreedom.org/pfp
—— (June 6, 2024). "My Discovery of *Human Action* and of Mises as a Philosopher." *HansHoppe.com*. https://hanshoppe.com/2024/06/my-discovery-of-human-action-and-of-mises-as-a-philosopher/. Forthcoming in *Essays in Honor of the Seventy-Fifth Anniversary of "Human Action."* Auburn, Ala.: Mises Institute, forthcoming 2025
Hülsmann, Guido (1997). "Knowledge, Judgment, and the Use of Property." *Rev. Austrian Econ*. 10, no. 1: 23–48. https://perma.cc/DKQ8-JX45)
Hughes, Justin (1988). "The Philosophy of Intellectual Property." *Georgetown L. J.* 77, no. 2, pp. 287–366. https://opencasebook.org/casebooks/493-copyright/resources/2.1.1-justin-hughes-the-philosophy-of-intellectual-property-77-georgetown-lj-287-part-ii-pages-296-314-1988/; https://cyber.harvard.edu/IPCoop/88hugh.html; https://perma.cc/U4XX-5DZV, *in* Moore, ed. (1997)
Johnson, Eric E. (2012). "Intellectual Property and the Incentive Fallacy." *Florida State U. L. Rev*. 39: 623–79. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1746343
Kelley, David and Roger Donway (1985). *Laissez Parler: Freedom in the Electronic Media*
Kickstarter (2012). "Double Fine Adventure." Funding period Feb. 8, 2012–Mar. 13 2012. https://perma.cc/MYH4-G38W
Kinsella, Stephan (Sep. 4, 2000). "In Defense of Napster and Against the Second Homesteading Rule." *LewRockwell.com.* https://archive.lewrockwell.com/kinsella/kinsella2.1.1.html
—— (Mar. 7, 2005). "There's No Such Thing as a Free Patent." *Mises Daily.* https://stephankinsella.com/2005/03/theres-no-such-thing-as-a-free-patent/
—— (Sep. 27, 2007). "What Are the Costs of the Patent System?" *Mises Economics Blog.* https://c4sif.org/2007/09/what-are-the-costs-of-the-patent-system-mises-2007/
—— (2008). *Against Intellectual Property*. Auburn, Ala.: Mises Institute. www.c4sif.org/aip
—— (Aug. 12, 2008). "Libertarian Favors $80 Billion Annual Tax-Funded 'Medical Innovation Prize Fund.'" *Mises Economic Blog*. https://c4sif.org/2008/08/libertarian-favors-80-billion-annual-tax-funded-medical-innovation-prize-fund-2008/
—— (Nov. 23, 2008). "$30 Billion Taxfunded Innovation Contracts: The 'Progressive-Libertarian' Solution." *Mises Economics Blog*. https://c4sif.org/2008/01/30-billion-taxfunded-innovation-contracts-the-progressive-libertarian-solution/
—— (Aug. 9, 2009). "Why Airwaves (Electromagnetic Spectra) Are (Arguably) Property)." *Mises Economics Blog.* https://stephankinsella.com/2009/08/why-airwaves-are-arguably-property/
—— (Nov. 16, 2009). "Rand on IP, Owning 'Values', and 'Rearrangement Rights.'" *Mises Economics Blog*. https://c4sif.org/2009/11/rand-on-ip-owning-values-and-rearrangement-rights/
—— (Jan. 6, 2010). "Intellectual Property and the Structure of Human Action." *StephanKinsella.com*. https://stephankinsella.com/2010/01/intellectual-property-and-the-structure-of-human-action/
—— (Jan. 20, 2010). "Reducing the Cost of IP Law." *Mises Daily.* https://c4sif.org/2010/01/reducing-the-cost-of-ip-law-mises-daily-2010/
—— (Feb. 3, 2010). "The Patent, Copyright, Trademark, and Trade Secret Horror Files." *Mises Economics Blog.* http://www.stephankinsella.com/2010/02/the-trademark-horror-file/

—— (July 28, 2010a). "The Death Throes of Pro-IP Libertarianism." *Mises Daily*. https://c4sif.org/2022/01/the-death-throes-of-pro-ip-libertarianism-mises-daily-2010/
—— (July 28, 2010b). "Examples of Ways Content Creators Can Profit Without Intellectual Property." *StephanKinsella.com*. http://www.stephankinsella.com/2010/07/examples-of-ways-content-creators-can-profit-without-intellectual-property/
—— (Aug. 1, 2010). "Leveraging IP." *Mises Economics Blog*. https://www.stephankinsella.com/2010/08/leveraging-ip/
—— (Aug. 9, 2010). "Innovations that Thrive Without IP." *StephanKinsella.com*. http://www.stephankinsella.com/2010/08/innovations-that-thrive-without-ip/
—— (Sep. 29, 2010a). "Costs of the Patent System Revisited," *Mises Economics Blog*. https://c4sif.org/2010/09/costs-of-the-patent-system-revisited-mises-2010/
—— (Sep. 29, 2010b). "Locke on IP; Mises, Rothbard, and Rand on Creation, Production, and "Rearranging." *Mises Economics Blog*. https://c4sif.org/2010/09/locke-on-ip-mises-rothbard-and-rand-on-creation-production-and-rearranging/
—— (Nov. 24, 2010). "The Mountain of IP Legislation," *C4SIF Blog*. https://c4sif.org/2010/11/the-mountain-of-ip-legislation/
—— (Dec. 6, 2010). "Intellectual Properganda." *Mises Economics Blog*. https://c4sif.org/2010/12/intellectual-properganda/)
—— (Jan. 18, 2011). "Intellectual Freedom and Learning Versus Patent and Copyright." *Economic Notes* No. 113. Libertarian Alliance [UK]. https://c4sif.org/2011/01/intellectual-freedom-and-learning-versus-patent-and-copyright-2011/
—— (Feb. 1, 2011) "How to Improve Patent, Copyright, and Trademark Law." *C4SIF Blog*. https://c4sif.org/2011/02/how-to-improve-patent-copyright-and-trademark-law/
—— (Feb. 2, 2011) "Intellectual Property's Great Fallacy." *C4SIF Blog*. https://c4sif.org/2011/02/intellectual-propertys-great-fallacy/
—— (March 4, 2011). "Types of Intellectual Property," *C4SIF Blog*. https://c4sif.org/2011/03/types-of-intellectual-property/
—— (April 1, 2011). "The Origins of Libertarian IP Abolitionism." *C4SIF Blog*. https://c4sif.org/2011/04/the-origins-of-libertarian-ip-abolitionism/
—— (April 13, 2011). "The Four Historical Phases of IP Abolitionism." *C4SIF Blog*. https://c4sif.org/2011/04/the-four-historical-phases-of-ip-abolitionism/
—— (June 9, 2011). "Hoppe on Falsificationism, Empiricism, and Apriorism and Protophysics." *StephanKinsella.com*. https://stephankinsella.com/2011/06/hoppe-on-falsificationism-empiricism-and-apriorism-and-protophysics/
—— (June 12, 2011). "On the Danger of Metaphors in Scientific Discourse." *StephanKinsella.com*. https://stephankinsella.com/2011/06/on-the-danger-of-metaphors-in-scientific-discourse/
—— (June 23, 2011). "Intellectual Property Rights as Negative Servitudes." *C4SIF Blog*. https://c4sif.org/2011/06/intellectual-property-rights-as-negative-servitudes/
—— (July 3, 2011). "Milton Friedman (and Rothbard) on the Distorting and Skewing Effect of Patents." *C4SIF Blog*. https://c4sif.org/2011/07/milton-friedman-on-the-distorting-effect-of-patents/
—— (July 19, 2011). "Intellectual Property Advocates Hate Competition." *Mises Economics Blog*. https://c4sif.org/2011/07/intellectual-property-advocates-hate-competition/
—— (July 29, 2011). "Mark Lemley: The Very Basis of Our Patent System… Is A Myth." *C4SIF Blog*. https://c4sif.org/2011/07/mark-lemley-the-very-basis-of-our-patent-system-is-a-myth/
—— (Dec. 6, 2011). "'The' Purpose of Patent Law." *C4SIF Blog*. https://c4sif.org/2010/12/the-purpose-of-patent-law/
—— (Dec. 22, 2011). "Comedian Louis C.K. Makes $1 Million Selling DRM Free Video via PayPal on his own website." *C4SIF.org*. https://c4sif.org/2011/12/comedian-louis-c-k-makes-1m-selling-drm-free-video-via-paypay-on-his-own-website/

—— (Jan. 9, 2012). "Stop calling patent and copyright 'property'; stop calling copying 'theft' and 'piracy.'" *C4SIF Blog*. https://c4sif.org/2012/01/stop-calling-patent-and-copyright-property-stop-calling-copying-theft-and-piracy/
—— (Jan. 23, 2012). "Conversation with an author about copyright and publishing in a free society." *C4SIF.org*. https://c4sif.org/2012/01/conversation-with-an-author-about-copyright-and-publishing-in-a-free-society/
—— (Feb. 1, 2012). "Ed Lopez: Fashion Copyright: A New Defense of Design Copying," *C4SIF Blog*. https://c4sif.org/2012/02/ed-lopez-fashion-copyright-a-new-defense-of-design-copying/
—— (Oct. 3, 2012). "Fashion Rights Extension to Copyright Coming Down the Pike." *C4SIF Blog*. https://c4sif.org/2012/10/fashion-rights-extension-to-copyright-coming-down-the-pike/
—— (Oct. 23, 2012a). "The Overwhelming Empirical Case Against Patent and Copyright." *C4SIF Blog*. https://c4sif.org/2012/10/the-overwhelming-empirical-case-against-patent-and-copyright/
—— (Oct. 23, 2012b). "Legal Scholars: Thumbs Down on Patent and Copyright." *C4SIF Blog*. https://c4sif.org/2012/10/legal-scholars-thumbs-down-on-patent-and-copyright/
—— (Jan. 5, 2013). "Hoppe on Treating Aggressors as Mere 'Technical Problems.'" *StephanKinsella.com*. https://stephankinsella.com/2013/01/hoppe-on-treating-aggressors-as-mere-technical-problems/
—— (March 19, 2013). "McElroy: 'On the Subject of Intellectual Property' (1981)." *C4SIF Blog*. https://c4sif.org/2013/03/mcelroy-on-the-subject-of-intellectual-property-1981/
—— (2014). *Do Business Without Intellectual Property*. Liberty.me. http://www.stephankinsella.com/2014/10/do-business-without-intellectual-property/
—— (Feb. 14, 2015). KOL172 | "Rethinking Intellectual Property: History, Theory, and Economics: Lecture 1: History and Law (Mises Academy, 2011). *Kinsella on Liberty Podcast*. https://stephankinsella.com/as_paf_podcast/kol172-rethinking-intellectual-property-history-theory-and-economics-lecture-1-history-and-law-mises-academy-2011/
—— (April 28, 2019). "Bryan Caplan's view on Slavery Contracts and IP." *C4SIF Blog*. https://c4sif.org/2019/04/bryan-caplans-view-on-slavery-contracts-and-ip/
—— (May 8, 2021). "KOL272-2 | Q&A with Hülsmann, Dürr, Kinsella, Hoppe (PFS 2019)." *Kinsella on Liberty Podcast*. https://stephankinsella.com/as_paf_podcast/kol272-2-qa-hulsmann-durr-kinsella-hoppe-pfs-2019/
—— (June 13, 2021). "Richard O. Hammer: Intellectual Property Rights Viewed As Contracts." *C4SIF Blog*. https://c4sif.org/2021/06/richard-o-hammer-intellectual-property-rights-viewed-as-contracts/
—— (Jan. 31, 2022). "On Conflictability and Conflictable Resources." *StephanKinsella.com*. https://www.stephankinsella.com/2022/01/on-conflictability-and-conflictable-resources/
—— (April 11, 2022). "Transcript: Debate with Robert Wenzel on Intellectual Property." *C4SIF Blog*. https://c4sif.org/2022/04/transcript-debate-with-robert-wenzel-on-intellectual-property/
—— (June 28, 2022a). "Human Action and Universe Creation." *StephanKinsella.com*. https://stephankinsella.com/2022/06/human-action-and-universe-creation/
—— (June 28, 2022b). "IP Law and 'Market Failure.'" *C4SIF Blog*. https://c4sif.org/2022/06/ip-law-and-market-failure/
—— (July 11, 2022). "Benjamin Tucker and the Great Nineteenth Century IP Debates in *Liberty* Magazine." *C4SIF Blog*. https://c4sif.org/2022/07/benjamin-tucker-and-the-great-nineteenth-century-ip-debates-in-liberty-magazine/
—— (July 28, 2022). "James L. Walker (Tak Kak), 'The Question of Copyright' (1891)," *C4SIF Blog*. https://c4sif.org/2022/07/james-l-walker-tak-kak-the-question-of-copyright-1891/
—— (2023a). *Legal Foundations of a Free Society*. Houston, Texas: Papinian Press. https://stephankinsella.com/lffs
—— (2023b). *You Can't Own Ideas: Essays on Intellectual Property*. Houston, Texas: Papinian Press. https://stephankinsella.com/own-ideas/
—— (2023c). "What Libertarianism Is." In Kinsella (2023a)

—— (2023d). "How We Come to Own Ourselves." In Kinsella (2023a)
—— (2023e). "Selling Does Not Imply Ownership, and Vice-Versa: A Dissection." In Kinsella (2023a)
—— (2023f). "Law and Intellectual Property in a Stateless Society." In Kinsella (2023a)
—— (2023g). "On Libertarian Legal Theory, Self-Ownership, and Drug Laws." In Kinsella (2023a)
—— (2023h). "Conversation with Schulman about Logorights and Media-Carried Property." In Kinsella (2023a)
—— (2023i). "A Libertarian Theory of Punishment and Rights." In Kinsella (2023a)
—— (2023j). "Dialogical Arguments for Libertarian Rights." In Kinsella (2023a)
—— (2023k). "Causation and Aggression" In Kinsella (2023a)
—— (2023l). "*Against Intellectual Property* After Twenty Years" In Kinsella (2023a)
—— (2023m). "Preface." In Kinsella (2023a)
—— (2023n). "Libertarianism After Fifty Years: What Have We Learned?" In Kinsella (2023a)
—— (2023o). "Legislation and the Discovery of Law in a Free Society." In Kinsella (2023a)
—— (2023p). "Knowledge, Calculation, Conflict, and Law." In Kinsella (2023a)
—— (2023q). "Goods, Scarce and Nonscarce." In Kinsella (2023a)
—— (2023r). "What It Means To Be an Anarcho-Capitalist." In Kinsella (2023a)
—— (2023s). "Introduction to Origitent." In Kinsella (2023a)
—— (2023t). "On the Logic of Libertarianism and Why Intellectual Property Doesn't Exist." In Kinsella (2023a)
—— (2023u). "A Libertarian Theory of Contract: Title Transfer, Binding Promises, and Inalienability." In Kinsella (2023a)
—— (June 6, 2023). "Nineteenth Century Criticism of the Patent System." *C4SIF Blog*. https://c4sif.org/2023/06/nineteenth-century-criticism-of-the-patent-system/
—— (2024a). "Defamation as a Type of Intellectual Property." In Jörg Guido Hülsmann and Stephan Kinsella, eds., *A Life in Liberty: Liber Amicorum in Honor of Hans-Hermann Hoppe*. Houston, Texas: Papinian Press. https://stephankinsella.com/hoppe-liber-amicorum/
—— (2024b) "The Title-Transfer Theory of Contract." *Papinian Press Occasional Paper, No. 1*. v.1.13. Forthcoming in David Howden, ed., *Palgrave Handbook of Misesian Austrian Economics*. Palgrave, forthcoming 2025. https://stephankinsella.com/2024/09/tttc-wp-1/
—— (Jan. 8, 2025). "David Gordon on IP." *C4SIF Blog*. https://c4sif.org/2025/01/david-gordon-on-ip/
—— (Jan. 24, 2025). "Libertarian and IP Answer Man: Artificial Intelligence and IP." *C4SIF Blog*. https://c4sif.org/2025/01/libertarian-and-ip-answer-man-artificial-intelligence-and-ip/
—— (March 19, 2025). "Whereupon Grok admits it (and AI) is severely gimped by copyright law." *C4SIF Blog*. https://c4sif.org/2025/03/whereupon-grok-admits-it-and-ai-is-severely-gimped-by-copyright-law/
—— (April 8, 2025). "KOL458 | Patent and Copyright versus Innovation, Competition, and Property Rights (APEE 2025)." *Kinsella on Liberty Podcast*. https://stephankinsella.com/as_paf_podcast/kol458-patent-copyright-innovation-competition-property-apee-2025/
—— (April 19, 2025). "On Property Rights in Superabundant Bananas and Property Rights as Normative Support for Possession." *StephanKinsella.com*. https://stephankinsella.com/2025/04/superabundant-bananas-property-rights-normative-support/
—— (April 20, 2025). "IP as Contract." *C4SIF Blog*. https://c4sif.org/2025/04/ip-as-contract/
—— (April 23, 2025a). "IP is Not 'Not Property.'" *C4SIF Blog*. https://c4sif.org/2025/04/ip-is-not-not-property/
—— (April 23, 2025b). "Copying, Patent Infringement, Copyright Infringement are not 'Theft,' Stealing, Piracy, Plagiarism, Knocking Off, Ripping Off." *C4SIF Blog*. https://c4sif.org/2025/04/copying-patent-infringement-copyright-infringement-not-theft/
—— (May 6, 2025). "Libertarian and Lockean Creationism: Creation As a Source of Wealth, not Property Rights." *C4SIF Blog*. https://c4sif.org/2025/05/libertarian-lockean-creationism/

—— (May 8, 2025). "Trump's 'Worst Idea': Undercutting Patent-Inflated Monopoly Pharmaceutical Patents." *C4SIF Blog*. https://c4sif.org/2025/05/trumps-worst-idea-pharmaceuticals/

——, ed. (2001–2013). *Trademark Practice and Forms*. Thomson Reuters

—— (2023). *The Anti-IP Reader: Free Market Critiques of Intellectual Property*. Houston, Texas: Papinian Press. https://stephankinsella.com/ip-reader/

Lévêque, François and Yann Ménière (2004). *The Economics of Patents and Copyrights*. Berkeley Electronic Press. https://perma.cc/GLH2-QFLF

Louisiana Civil Code [La. Civ. Code] (2025). https://www.legis.la.gov/legis/Laws_Toc.aspx?folder=67&level=Parent

Macfie, Robert Andrew, ed. (1869). *Recent Discussions on the Abolition of Patents for Inventions in the United Kingom, France, Germany, and the Netherlands: Evidence, Speeches, and Papers in Its Favour: With Suggestions as to International Arrangements Regarding Inventions and Copyright.* London: Longmans, Green, Reader and Dyer. https://books.google.nl/books?id=jEt3dWhdX_cC&printsec=frontcover&dq=robert+macfie&hl=en&sa=X&ei=SD2CUc3UAamp0QWcn4C4Dw#v=onepage&q=robert%20macfie&f=false

Machlup, Fritz (1958). *An Economic Review of the Patent System.* U.S. Senate Subcommittee on Patents, Trademarks & Copyrights, 85th Cong., 2d Session, Study No. 15. https://mises.org/library/economic-review-patent-system

Machlup, Fritz and Edith Penrose (1950): "The Patent Controversy in the Nineteenth Century." *J. Econ. History* 10, no. 1: 1–29

Masnick, Mike (Feb. 6, 2012). "Hollywood Wants To Kill Piracy? No Problem: Just Offer Something Better." *Techdirt*. https://perma.cc/73TB-YQX8

—— (Feb. 9, 2012). "People Rushing to Give Hundreds of Thousands of Dollars in Just Hours for Brand New Adventure Game." *Techdirt.* https://www.techdirt.com/2012/02/09/people-rushing-to-give-hundreds-thousands-dollars-just-hours-brand-new-adventure-game/

—— (Feb. 12, 2012). "We're Living In the Most Creative Time In History." *Techdirt*. https://perma.cc/F6HY-QHG9

McElroy, Wendy (2002). "Intellectual Property" In *The Debates of Liberty: An Overview of Individualist Anarchism, 1881–1908*. Lexington Books. https://perma.cc/ZQM2-82B9. Reprinted without endnotes as "Copyright and Patent in Benjamin Tucker's Periodical," *Mises Daily*. July 28, 2010. https://mises.org/library/copyright-and-patent-benjamin-tuckers-periodical

Meiners, Roger E. and Robert J. Staaf (1990). "Patents, Copyrights, and Trademarks: Property or Monopoly." *Harv. J. L. & Pub. Pol'y* 13, no. 3: 911–48

Menell, Peter S., Mark A. Lemley, Robert P. Merges & Shyamkrishna Balganesh (2022). *Intellectual Property in the New Technological Age: Volume I: Perspectives, Trade Secrets & Patents.* Clause 8 Publishing

Merryman, John Henry (1976). "The Refrigerator of Bernard Buffet." *Hastings L. J.* 27, no. 5: 1023–1049. https://repository.uclawsf.edu/hastings_law_journal/vol27/iss5/3/

Mises, Ludwig von (1953). "On the Measurement of Value." In *The Theory of Money and Credit.* New Haven: Yale University Press. https://mises.org/library/theory-money-and-credit

—— (1962). *The Ultimate Foundation of Economic Science: An Essay on Method.* Princeton, N.J.: D. Van Nostrand Company, Inc. https://mises.org/library/ultimate-foundation-economic-science

—— (1981). *Socialism: An Economic and Sociological Analysis*. Trans. J. Kahane. Indianapolis, Ind: Liberty Fund. https://oll.libertyfund.org/title/kahane-socialism-an-economic-and-sociological-analysis

—— (1998). *Human Action: A Treatise on Economics*. Scholar's ed. Auburn, Ala.: Mises Institute. https://mises.org/library/human-action-0

—— (2003). *Epistemological Problems of Economics*. 3d ed., George Reisman, trans. Auburn, Ala.: Mises Institute. https://mises.org/library/epistemological-problems-economics

Moore, ed., Adam D. (1997). *Intellectual Property: Moral Legal and International Dilemmas*. New York: Rowman & Littlefield. https://perma.cc/L78R-EMFS

Moore, Adam D. and Kenneth Einar Himma (2011). "Intellectual Property," in Edward N. Zalta, ed., *Stanford Encyclopedia of Philosophy*. Stanford University. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1980917; https://plato.stanford.edu/entries/intellectual-property/

Nance, Dale A. (1990). "Foreword: Owning Ideas." *Harv. J. L. & Pub. Pol'y* 13, no. 3: 757–774

Narveson, Jan (2002). "The Anarchist's Case." In *Respecting Persons in Theory and Practice*. Lanham, Md.: Rowman & Littlefield

Orland, Kyle (Feb. 9, 2012). "Double Fine seeks to cut out publishers with Kickstarter-funded adventure." *ars technica*. https://arstechnica.com/gaming/2012/02/double-fine-seeks-to-cut-out-publishers-with-kickstarter-funded-adventure/

Palmer, Tom G. (1989). "Intellectual Property: A Non-Posnerian Law and Economics Approach." *Hamline L. Rev*. 12, no. 2: : 261–304. https://perma.cc/DH7K-ZCRV

—— (1990). "Are Patents and Copyrights Morally Justified? The Philosophy of Property Rights and Ideal Objects." *Harv. J. L. & Pub. Pol'y* 13, no. 3: 817–865. https://perma.cc/J8LY-L4MQ

Patent Act of 1790. https://en.wikipedia.org/wiki/Patent_Act_of_1790

Priest, George (1986). "What Economists Can Tell Lawyers About Intellectual Property: Comment on Cheung." *Research in Law & Econ*. 8: 19–24

Proudhon, Pierre-Joseph (1868). "Les Majorats littéraires." Luis Sundkvist, trans. In Lionel Bently and Martin Kretschmer, eds., *Primary Sources on Copyright* (1450–1900). www.copyrighthistory.org/cam/index.php

Rastogi, Vallabhi (Feb. 27, 2021). "Theories of Intellectual Property Rights." *Enhelion Blogs*. https://perma.cc/U9D5-9V4U

Read, Leonard (Nov. 2, 2011). "I Don't Know." *Mises Daily*. https://mises.org/library/i-dont-know

Reichman, Jerome H. (1995). "Charting the Collapse of the Patent-Copyright Dichotomy: Premises for a Restructured International Intellectual Property System." *Cardozo Arts & Ent. L.J.* 13: 475–520. https://scholarship.law.duke.edu/faculty_scholarship/685/

Ridley, Matt (2020). *How Innovation Works: And Why It Flourishes in Freedom*. Harper

Rothbard, Murray N. (1998). "Knowledge, True and False." In *The Ethics of Liberty*. New York: New York University Press. https://mises.org/library/knowledge-true-and-false

—— (2009). *Man, Economy, and State, with Power and Market*. Scholars ed., second ed. Auburn, Ala.: Mises Institute. https://mises.org/library/man-economy-and-state-power-and-market

—— (2011a). *Economic Controversies*. Auburn, Ala.: Mises Institute. https://mises.org/library/economic-controversies

—— (2011b). "Praxeology, Value Judgments, and Public Policy." In *Rothbard (2011a)*

—— (2011c). "Toward a Reconstruction of Utility and Welfare Economics." In *Rothbard (2011a)*

—— (2011d). "The Mantle of Science." In *Rothbard (2011a)*

Rubins, Noah D., Thomas N. Papanastasiou and Stephan Kinsella (2020). *International Investment, Political Risk, and Dispute Resolution: A Practitioner's Guide*, 2nd ed. Oxford University Press

Samuelson, Pamela (2000). "Privacy as Intellectual Property." *Stan. L. Rev*. 52, no. 5, pp. 1125–75. https://lawcat.berkeley.edu/record/1116878/files/fulltext.pdf

Scally, Derek (Mar. 5, 2022). "Nosferatu and the fangs of copyright infringement." *Irish Times*. https://perma.cc/9ZFN-JUHD

Soepboer, Mick (July 2009). "Libertarian views on intellectual property law: An analysis of laissez-faire theories applied on the modern day IP system." University of Cape Town, School for Advanced Legal Studies, Master Dissertation Commercial Law. https://perma.cc/4HR6-743V

Shively, Charles, ed. (1971). *The Collected Works of Lysander Spooner*. Vol. 3, reprint ed. Weston, Mass.: M&S Press. 1971 [1855]. www.lysanderspooner.org/works

Spooner, Lysander (1971a). "A Letter to Scientists and Inventors, on the Science of Justice, and their Rights of Perpetual Property in their Discoveries and Inventions." In Shively, ed. (1971)

—— (1971b). "The Law of Intellectual Property or an Essay on the Right of Authors and Inventors to a Perpetual Property in Their Ideas." In Shively, ed. (1971)

Statute of Anne (1710): An Act for the Encouragement of Learning, 8 Ann. c. 21 (Eng.)

Statute of Monopolies (1624): An Act concerning Monopolies, 21 Jac. 1 c. 3 (Eng.)

Tassi, Paul (Feb. 3, 2012). "You Will Never Kill Piracy, and Piracy Will Never Kill You." *Forbes.* https://perma.cc/23W2-E2FT

Thomas, J.A.C., ed. (1975). *The Institutes of Justinian: Text, Translation, and Commentary*. J.A.C. Thomas, trans. Amsterdam: North-Holland Publishing Company

Torrance, Andrew W. and Bill Tomlinson (2009). "*Patents and the Regress of Useful Arts*," *Colum. Science & Tech. L. Rev*. 10: 130–168. https://journals.library.columbia.edu/index.php/stlr/issue/view/406

Trump, Donald J. (May 12, 2025). "Executive Order: Delivering Most-Favored-Nation Prescription Drug Pricing to American Patients." White House. https://www.whitehouse.gov/presidential-actions/2025/05/delivering-most-favored-nation-prescription-drug-pricing-to-american-patients/

Tucker, Jeffrey A. (Feb. 21, 2012). "Eternal Copyright." *C4SIF Blog*. https://c4sif.org/2012/02/eternal-copyright/

United States Constitution

Valjak, Domagoj (Apr. 5, 2017). "All copies of the cult classic 'Nosferatu' were ordered to be destroyed after Bram Stoker's widow had sued the makers of the film for copyright infringement." *The Vintage News*. https://perma.cc/L64W-8B38

Williams, Heidi L. (Jan. 2017). "How Do Patents Affect Research Investments?" NBER Working Paper Series, Working Paper 23088. https://www.nber.org/papers/w23088

Yiannopoulos, A.N. (2001). *Louisiana Civil Law Treatise, Property*. West Group, 4th ed.