

This Week in Copyright:

Copywrong?

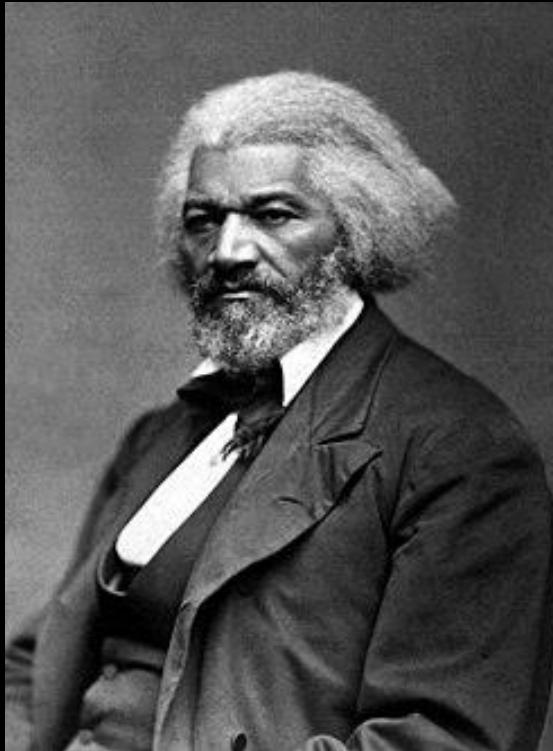
**The Legal & Economic Case for the
Abolition of Intellectual Property**

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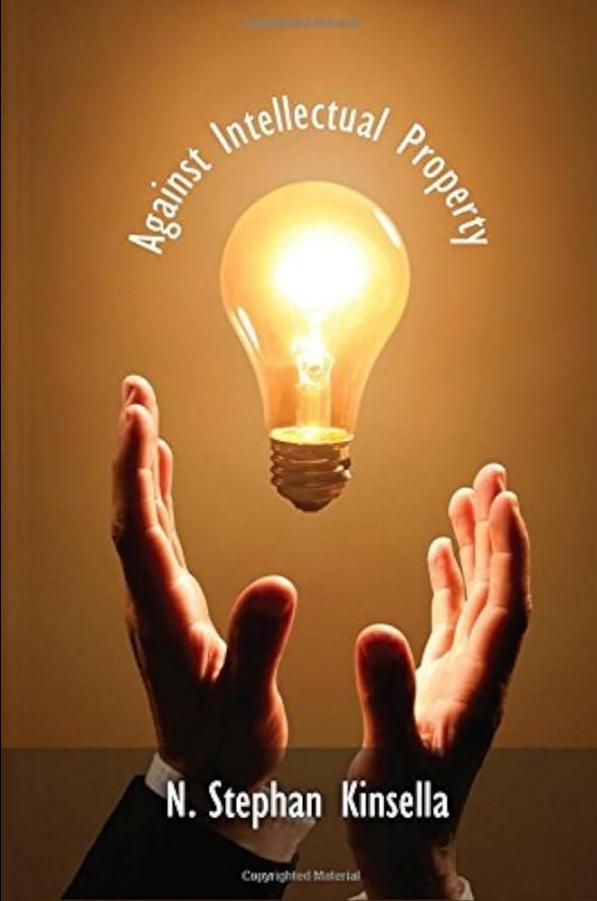
Being an abolitionist does not mean being a stubborn and lonely.



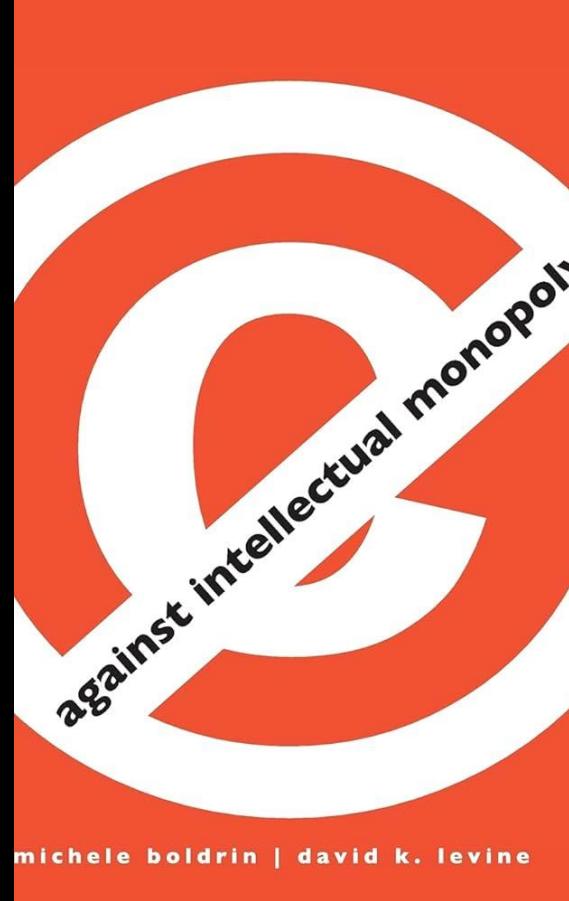
Frederick Douglass.

“I would unite with anybody to do right, and with nobody to do wrong.”

Lawyers and economists agree: IP is unethical, immoral, and inefficient.



“Against Intellectual Property.”
Stephan Kinsella (patent attorney).



“Against Intellectual Monopoly.”
Michele Boldrin & David K. Levine.



IP reduces competition & output, while increasing unethical behavior & prices.

IP is a *violation of natural law*.

IP is a policy choice. It is not a natural extension of physical property.

IP is an **arbitrary intervention** into the law, in response to political pressure—by both industry & foreign influence.

Innovation does not require IP.

Individuals and businesses innovate without IP protection every day.

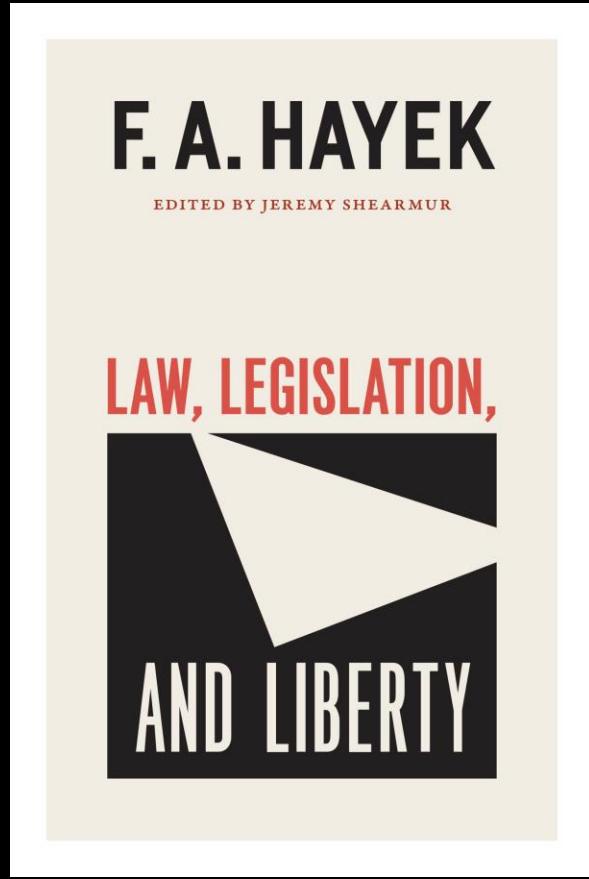
1. Not every industry is **protected** by IP (e.g., fashion/auto design, fonts)
2. Even in protected industries, **secrets are easier to protect** than IP.
3. People are **naturally creative**. 100,000 years of creativity before first IP.

No IP leads to more efficiency.

IP is a *monopoly right*. Like all monopolies, IP reduces output & raises prices.

“**Legitimate**” IP **holders want injunction on competitors**, which reduces output. “**IP Trolls**” **want royalties**, which raises prices.

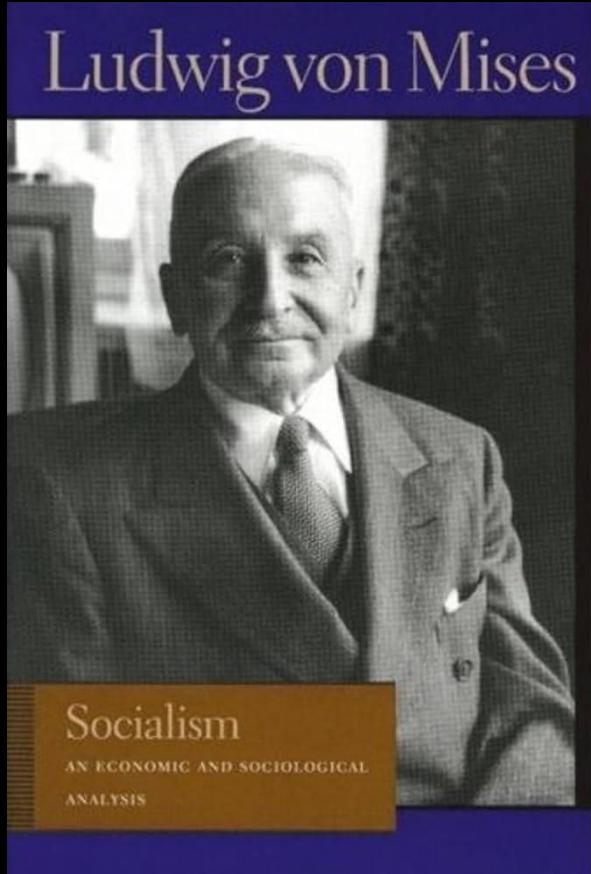
“Law” is not the same thing as “legislation.” There is IP legislation; there is no IP law.



“Law, Legislation, and Liberty.”
F.A. Hayek. Available at the TJSL Library!

- **Law** is the principles of peaceful conduct. It develops spontaneously, “results of human action [but not] human design.”
 - Think “laws of nature,” or the rules of grammar.
- **Legislation** are man-made rules and orders. Legislation can (and often do) violate the Law. (Think of a statute that “legalizes” shoplifting.)
 - This leads to disorder and violence.
 - Duty of people to correct it.

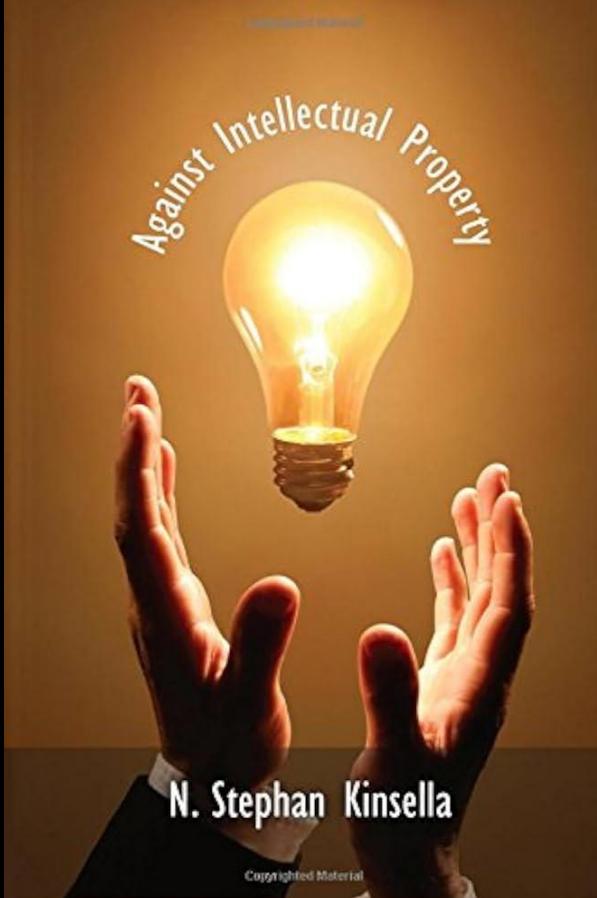
“Ownership” has an economic meaning (to control) & a legal meaning (to retain a right).



“Socialism: An Economic and Sociological analysis.”
Ludwig von Mises. Available at the TJSL Library!

- **Economic ownership** is the physical “having” or control of something.
- **Lawful ownership** is who “should have” something.
 - Thus, one may not physically have something, despite that the Law says they should have it (e.g., in theft).
 - **Selling something economically does not imply that you owned it legally.**
 - E.g., [economically] selling your creative labor does not imply you [lawfully] own it.

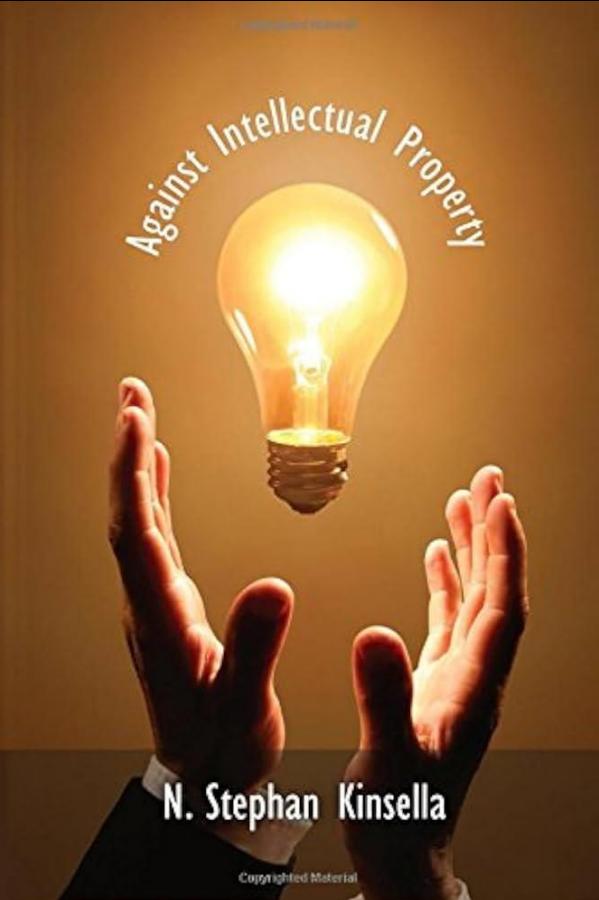
Lawful ownership serves Justice by reducing conflict over scarce resource.



- **Justice**: “to live honestly, to hurt no one, to give every one his due.”
- **Conflict over scarce resources causes harm.** Thus, justice requires to reduce conflict over scarce resources.
- **Voluntary trade** is a peaceful solution to scarcity. Thus, justice favors voluntary trade of scarce resources.

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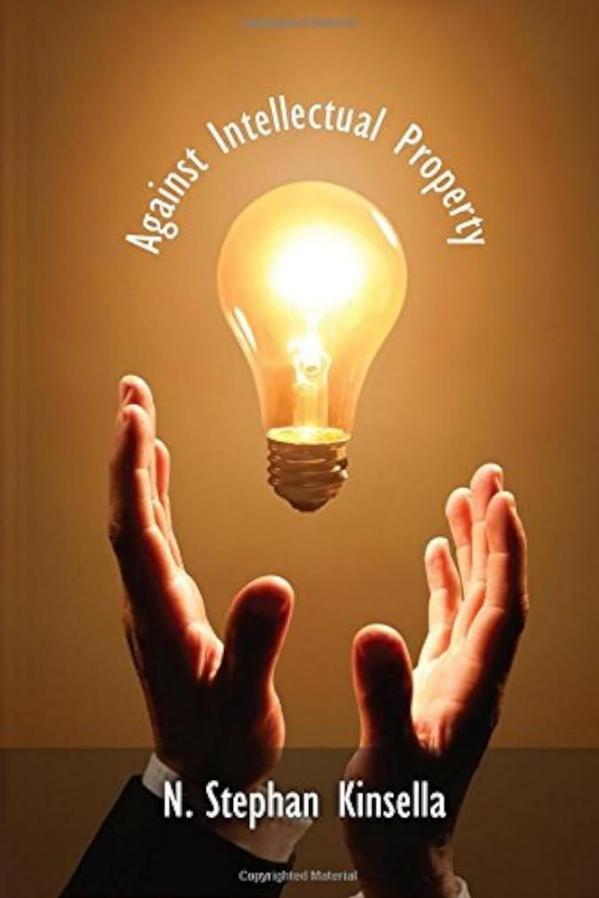
Ideas are not scarce resources. The Law can only cover physical resources.



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- **Scarcity requires *rivalry* and *excludability*.**
 - Rivalry: Use by one precludes use by another.
 - Excludability: Ability to prevent others from using the resource.
- **Ideas are not scarce.**
 - Nonrival: you and I can both think of the same idea at the same time.
 - Nonexcludable: you & I can produce the same idea independently.
- **Thus, Justice does not apply to ideas, because there can be no conflict over ideas.**

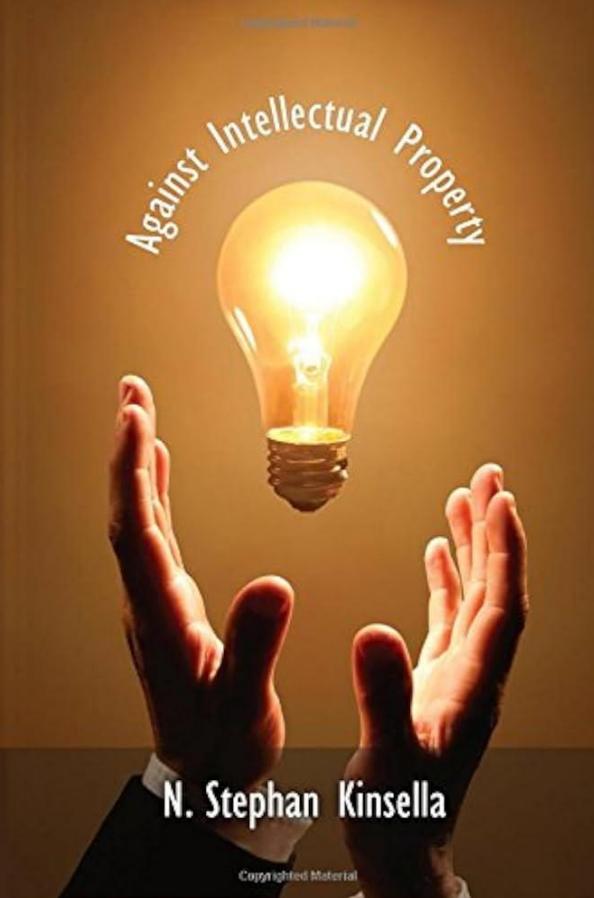
IP legislation creates conflict over scarce resources; therefore, it is unjust.



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- **IP legislation seemingly gives rights to ideas. But in reality, it gives rights to OPP: *Other People's Property*.**
 - IP gives the right to exclude others from using their physical property in ways that infringe on copyright/patent.
 - E.g., someone uses their physical body to reproduce copyrighted work.
- **Since OPP claims are involuntary, they violate the Law.**
 - IP holder has right to recover “damages”, i.e., physical property (including money) without owner’s consent.

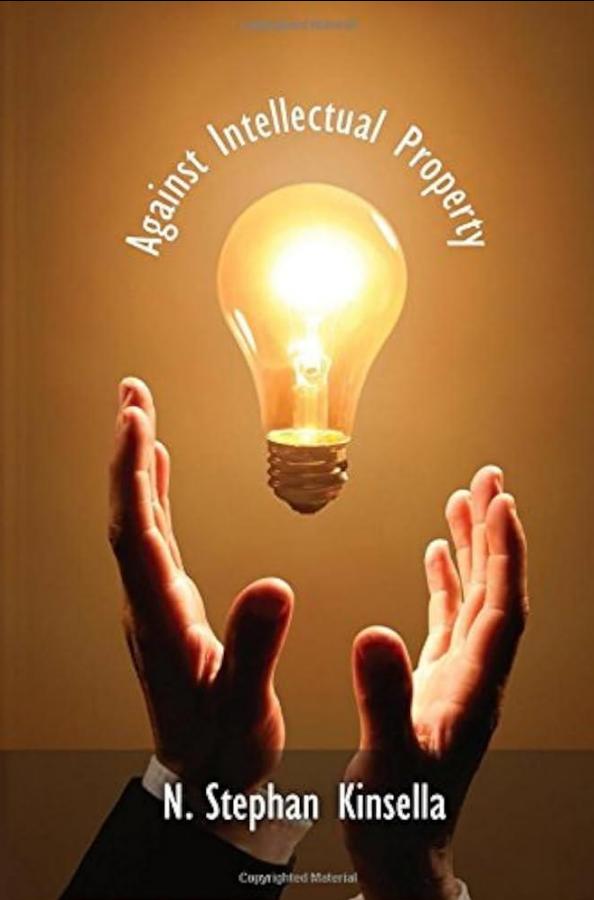
IP infringement damages are unconsensual because they cannot be established consensually.



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- **IP fails as contract:**
 - Contract cannot bind third-parties not in privity. Yet IP binds third-parties.
- **IP fails as “reservation right”:**
 - Cannot “reserve” rights without contract
- **Rejecting the bundle-of-rights view:**
 - There must be lawful limits to what rights can and can't exist.
- **The arbitrariness of IP:**
 - Not every industry is protected by IP to the same extent.

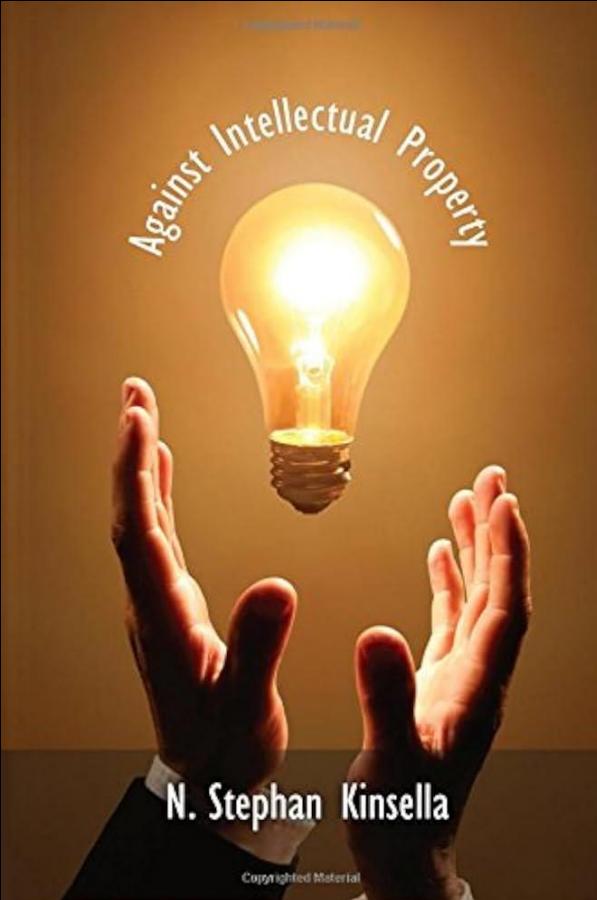
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- **IP has nothing to do with plagiarism:**
 - Plagiarism is about misrepresenting authorship. IP infringements exist even if true authorship is not an issue.
- **IP has nothing to do with fraud:**
 - The injured party of a fraud is the customer. IP awards damages not to the customer, but to the *competitor*.
- **IP may be un-Constitutional:**
 - If new law contradicts old law, old law is repealed. 1A is newer than IP clause.

IP is Unconstitutional, as it is implicitly repealed by the First Amendment.

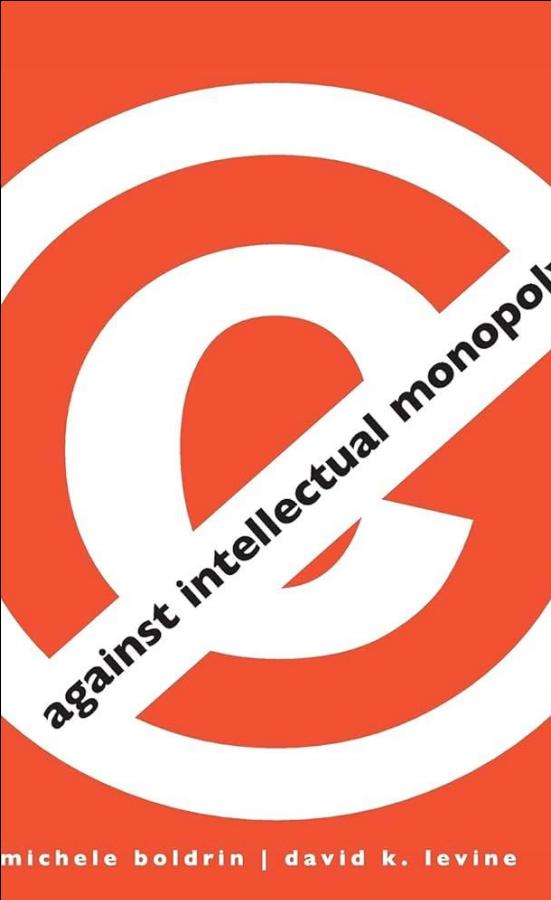


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- **Implicit repeal test** (*Penziner v. West American Finance Co. (10 Cal 2d)*):
 - “the two acts must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.”
 - **Irreconcilable**: IP abridges freedom of speech
 - **Clearly repugnant**: IP enables increased “surveillance, warrantless searches and seizures, punitive bans of people from the Internet without due process, censorship...”
 - **Cannot concurrently operate**: IP requires constantly shifting statutes to deal with the natural “tensions” involved with free speech, as well as the technological progress & political problems.

The Economic Point of View: Theory and evidence against IP as necessary or sufficient.

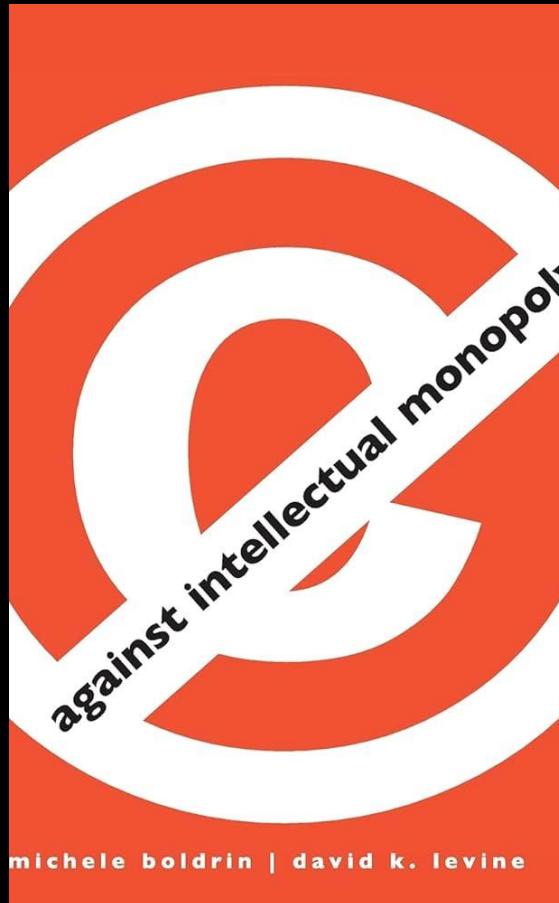
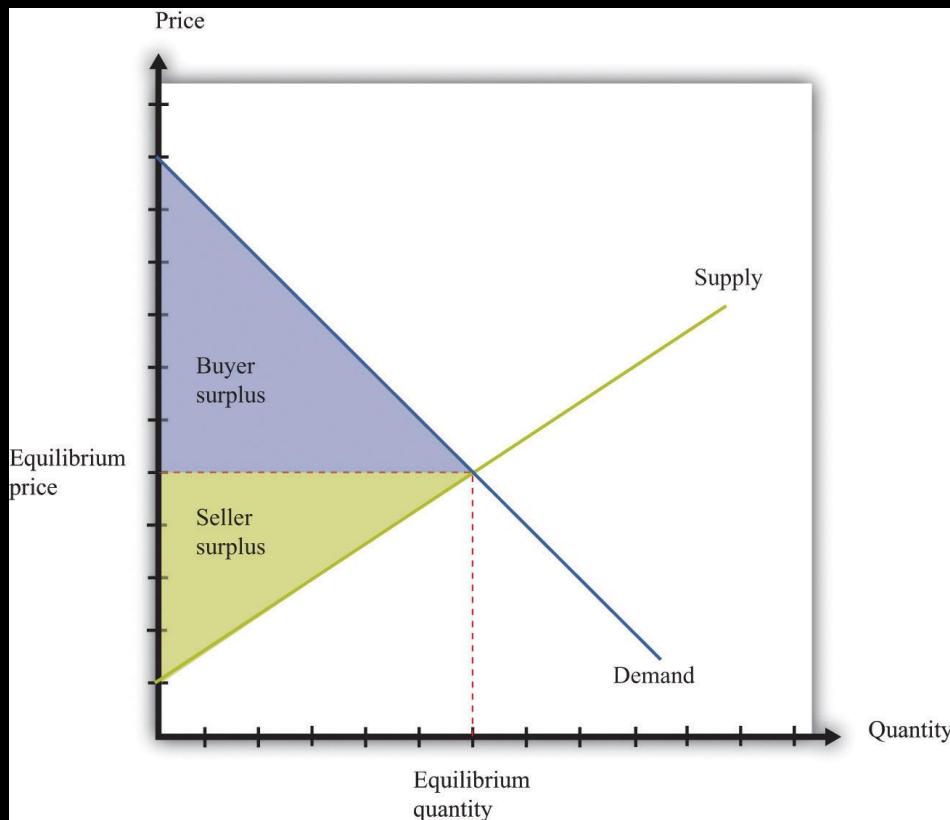
- **The Constitution makes an economic claim!**
 - Whether IP serves to “promote the useful Arts & Sciences” is a factual question.
- **IP in theory:**
 - IP is a monopoly, which generates supernormal profits. But there are other ways to profit.
- **Evidence of IP is weak:**
 - Since 1951, economists have noticed a lack of clear & convincing data as to whether the benefits of IP outweigh the costs.



“Against Intellectual Monopoly.”
Michele Boldrin & David K. Levine.

Supply and demand: A competitive market is a socially optimal market.

- **Socially optimal output**

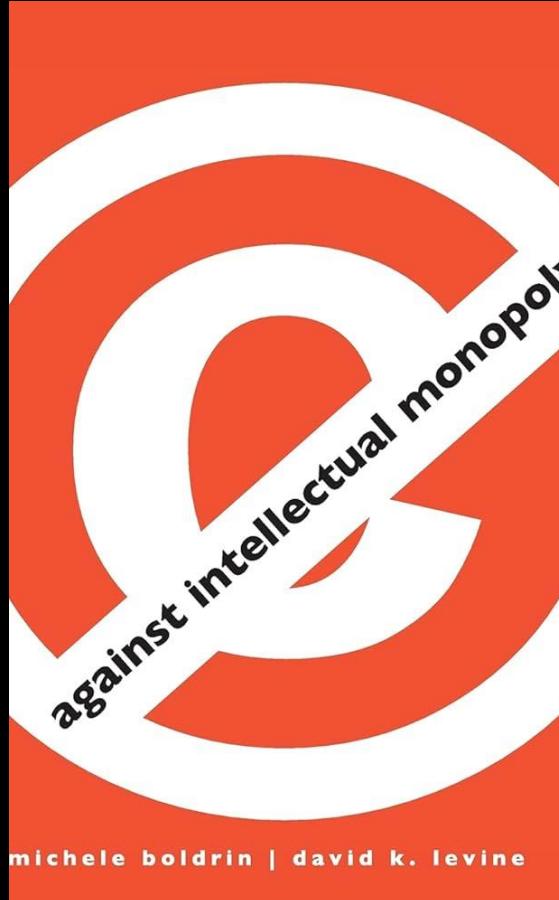


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Monopolists are anti-social. That means they produce fewer goods at higher prices.

- **Monopoly as anti-competitive:**

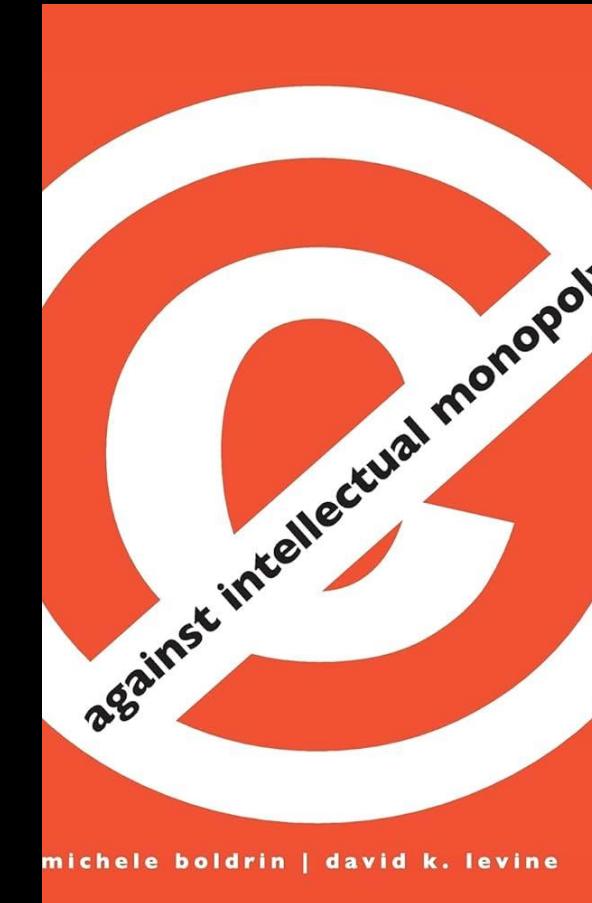
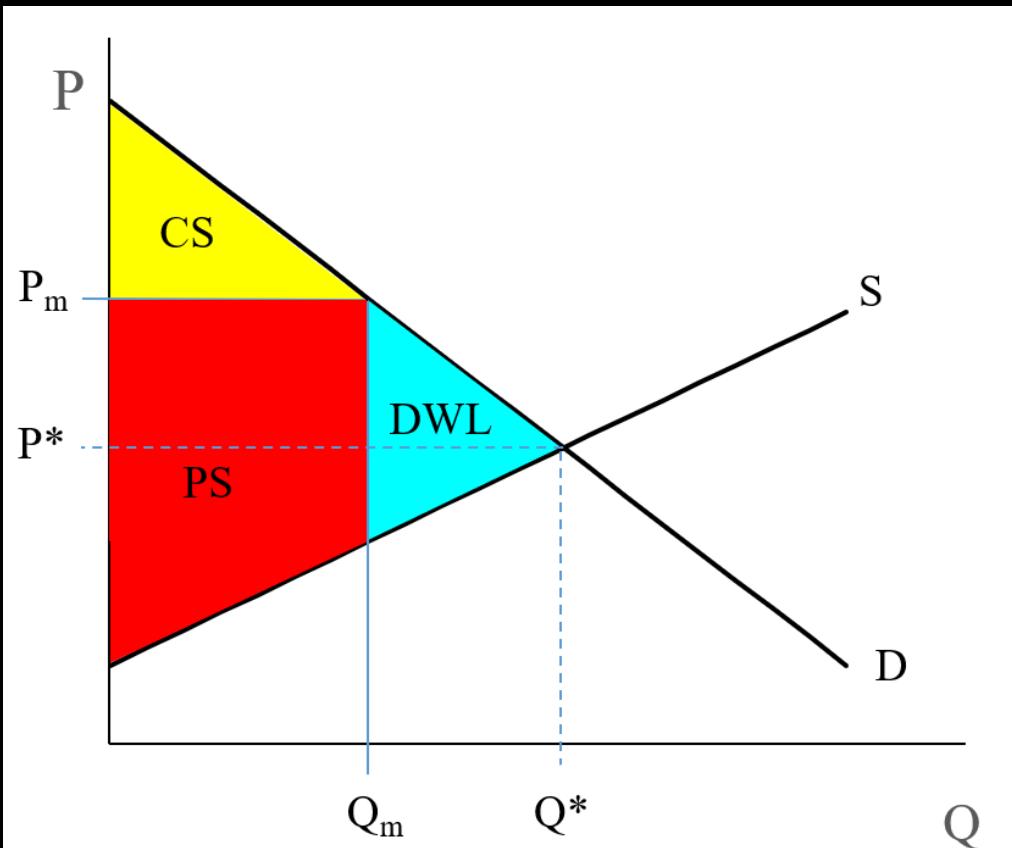
- A monopolist is a firm in a market competition is limited by law.
- Without competition, a monopolist can charge a lot more for its products than it costs to produce each unit.
- Without competition, a monopolist does not have to produce as many units.
- By charging more and producing less, a monopolist earns supernormal *monopoly profits*.



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Supply and demand and legislation: Monopolists produce less and charge more.

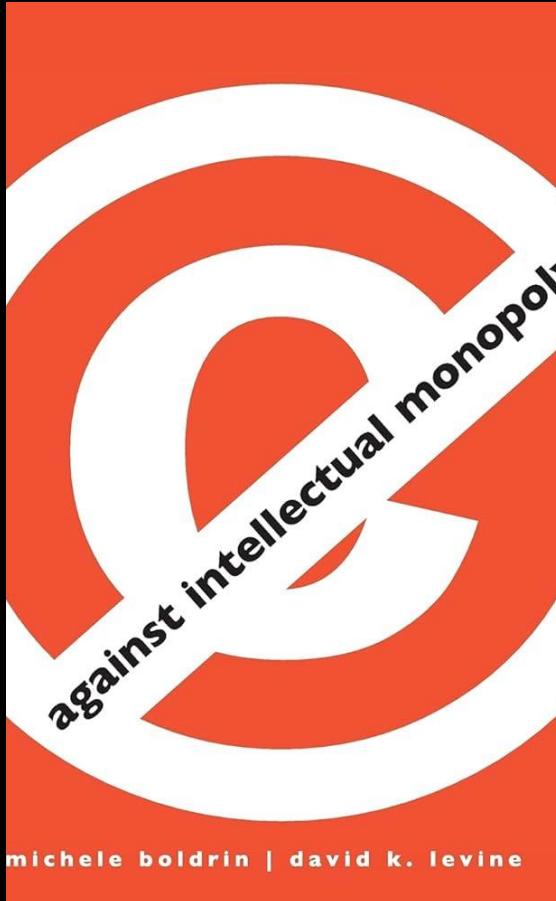
- Socially suboptimal output



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The Economic Point of View: IP as an inefficient, political monopoly.

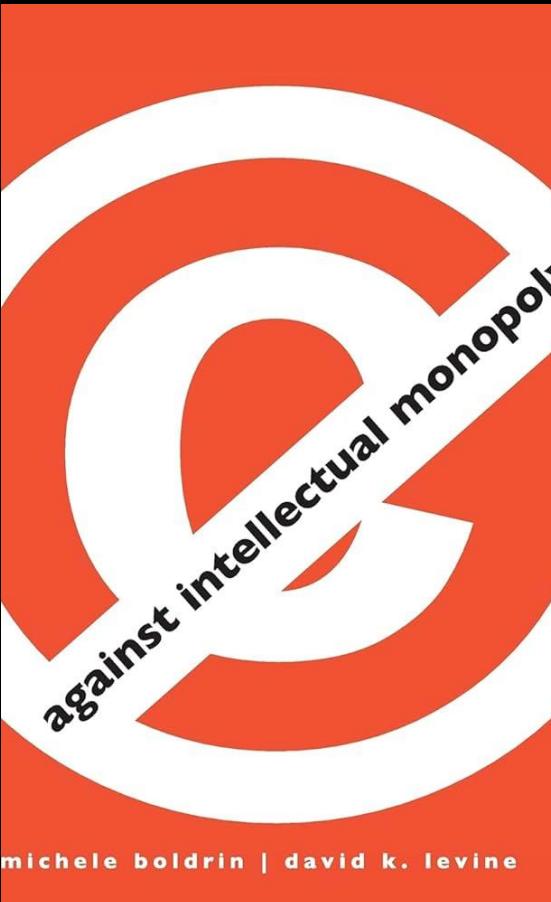
- **IP is a monopoly power:**
 - It is a legal restriction on competition.
 - It increases prices and reduces quantity.
 - Therefore it is inherently suboptimal.
- Monopoly profits gives **politically connected more power to lobby** in favor of stronger copyright protections at detriment of competitors.



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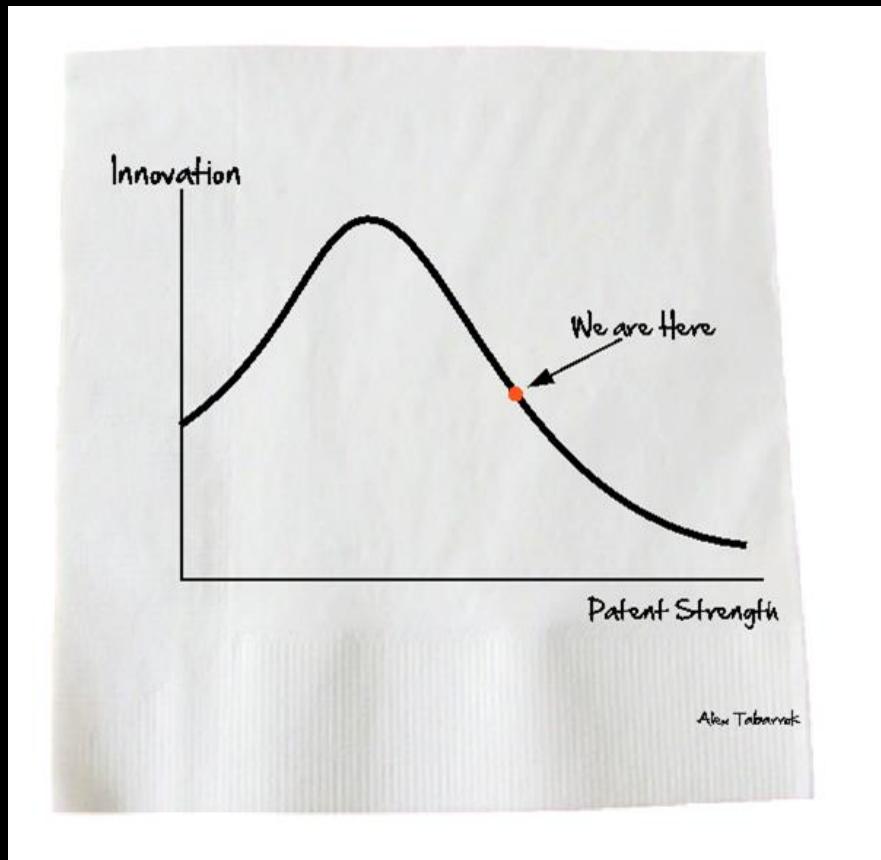
Business can, does, and will happen without IP.

- **IP is not necessary to incentivize production of innovation and art**
 - Innovation and art existed for thousands of years before IP
- **IP has distorted business models.**
 - The costs in IP-heavy industries are *inflated* because the *profits* are supernormal.
 - No *ex ante* reason to believe that the current expenditure is optimal.

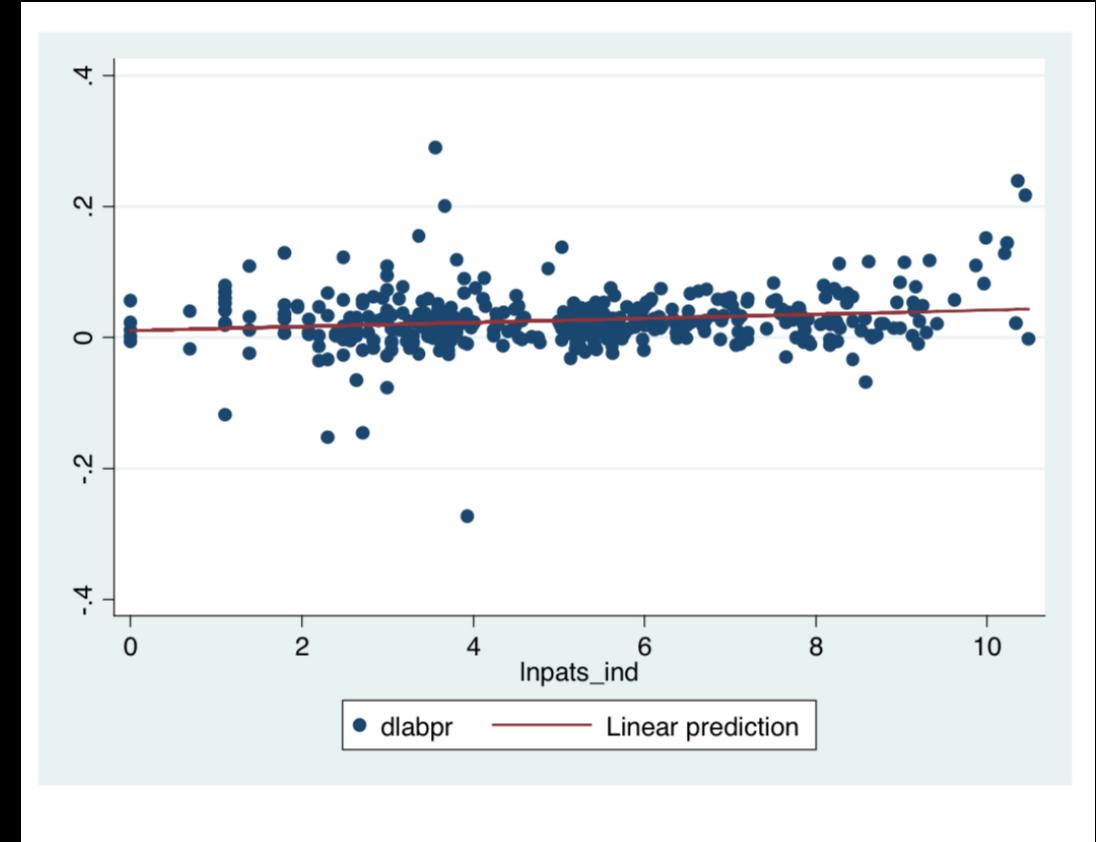


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Fantasy vs. reality: Patents on net have no effect on productivity. The optimum is zero.



The imaginary production of patents: an “inverted-U” curve with an “optimal” amount of patents being more than zero.



Patents in reality: No relationship between parenting and productivity (Boldrin & Levine, “The Case Against Parents,” 2012).

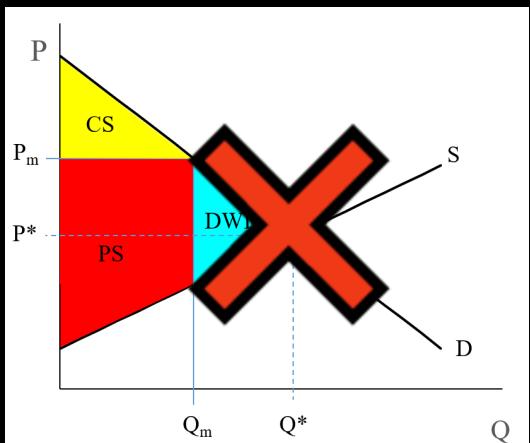
IP-driven business models are unsustainable without IP. But it's not the end of the world.



- This is akin to asking a slavery abolitionist, “without slavery, who will pick the cotton?”
- The existence of IP has led to the development of business models that depend on IP. Without IP, those business models will change.

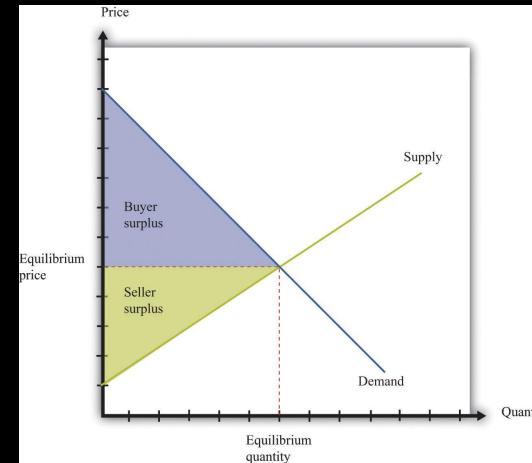
Summary

Rejecting:



“
Congress
shall have power...
to promote the progress
of science and useful arts,
by securing for limited
times... and
inventors... exclusive
right to their
respective writings
and discoveries.
”

ARTICLE I, SECTION 8
THE CONSTITUTION OF THE UNITED STATES

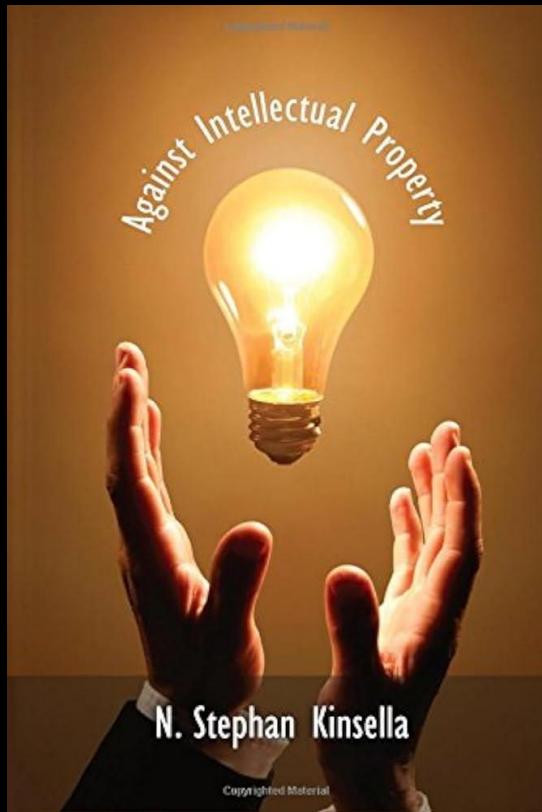


Accepting:



Thank you!

“Against Intellectual Property.”
<https://tinyurl.com/againstip>



Questions?

“Against Intellectual Monopoly.”
<https://tinyurl.com/againstim>

