

**This Week in Copyright:**

**Copywrong?**

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

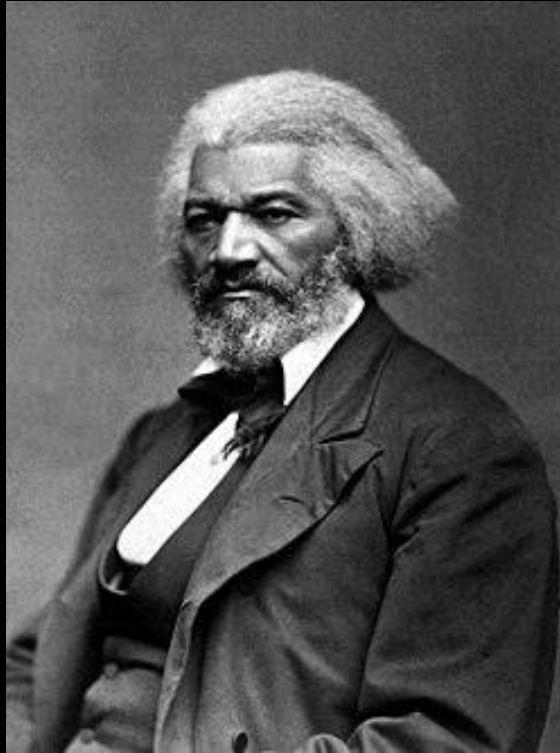
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Ash Navabi

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

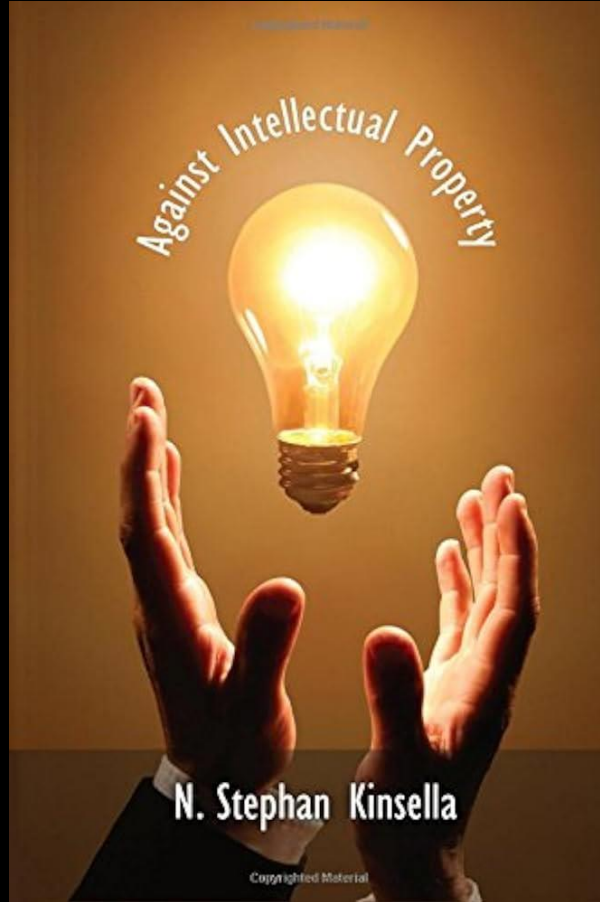
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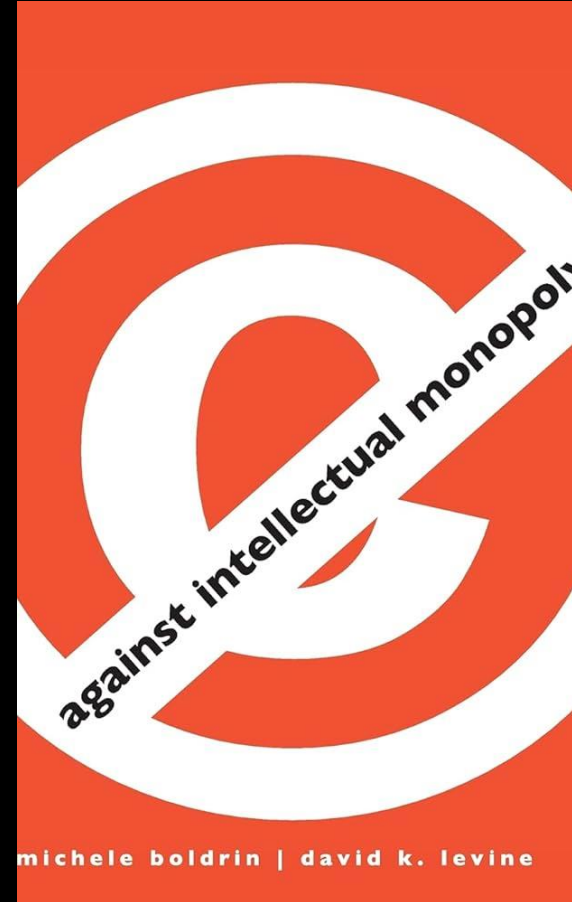
**Frederick Douglass.**

“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.

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## **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.

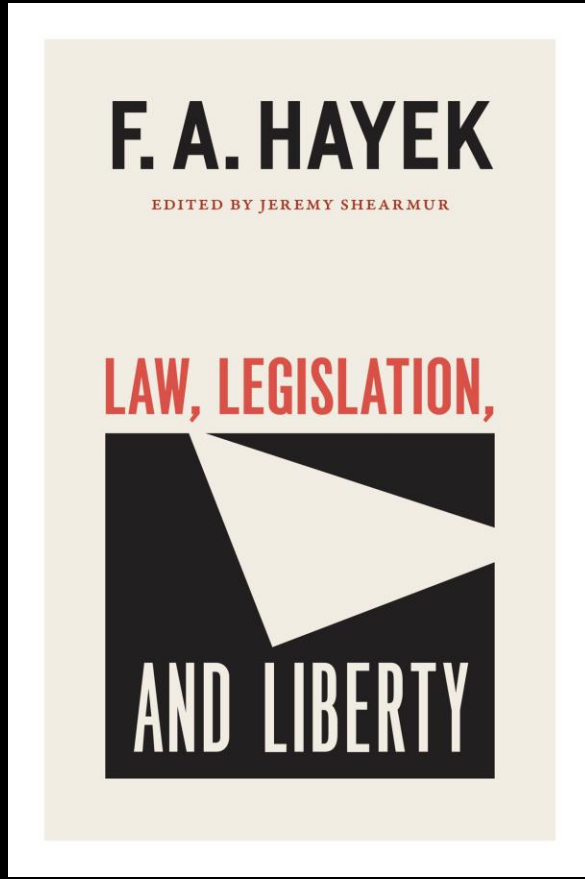
## **No IP leads to more efficiency.**

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.

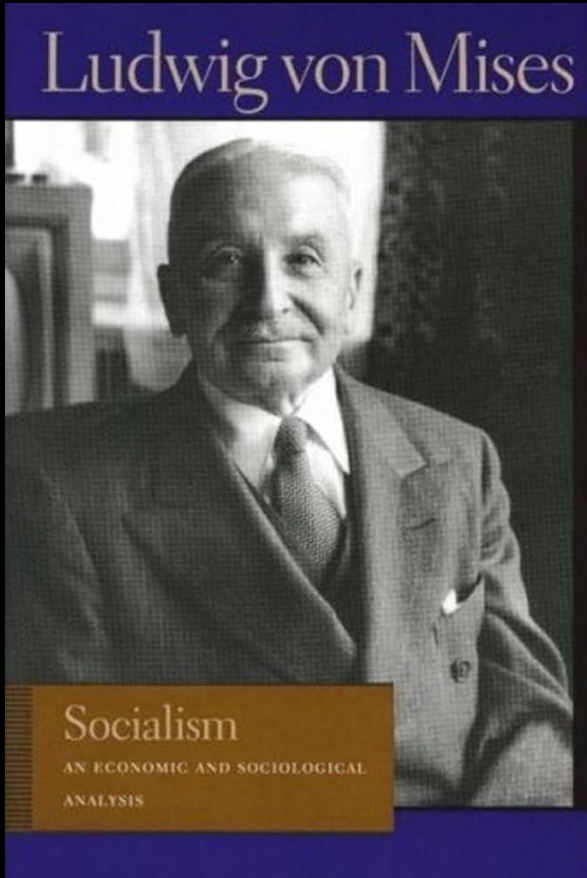
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- **Law** is the principles of peaceful conduct. It develops spontaneously, “results of human action [but not] human design.”
  - Think “laws of nature,” or the rules of grammar.
- **Legislation** are man-made rules and orders. Legislation can (and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

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

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

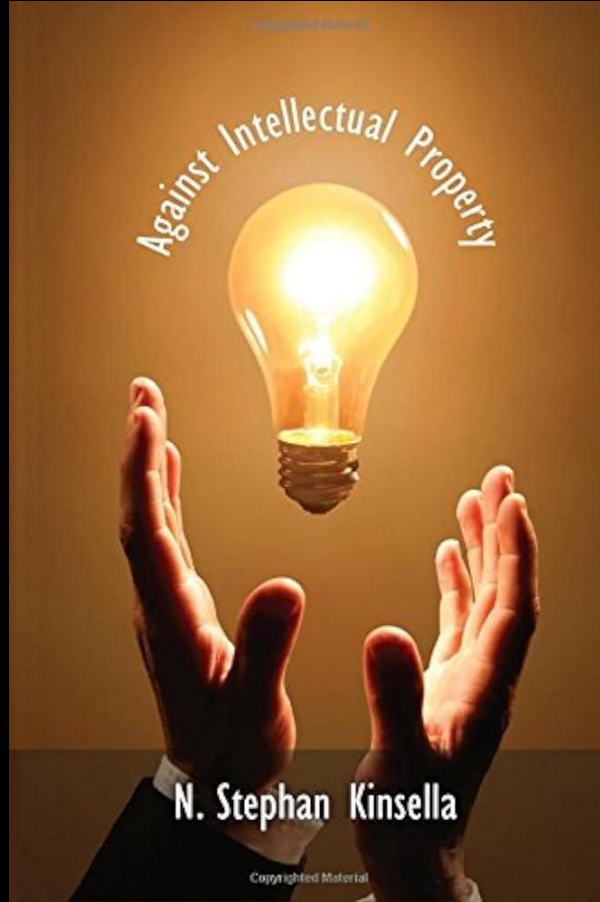


- **Economic ownership** is the physical “having” or control of something.
- **Lawful ownership** is who “should have” something.
  - Thus, one may not physically have something, despite that the Law says they should have it (e.g., in theft).
- **Selling something economically does not imply that you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

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



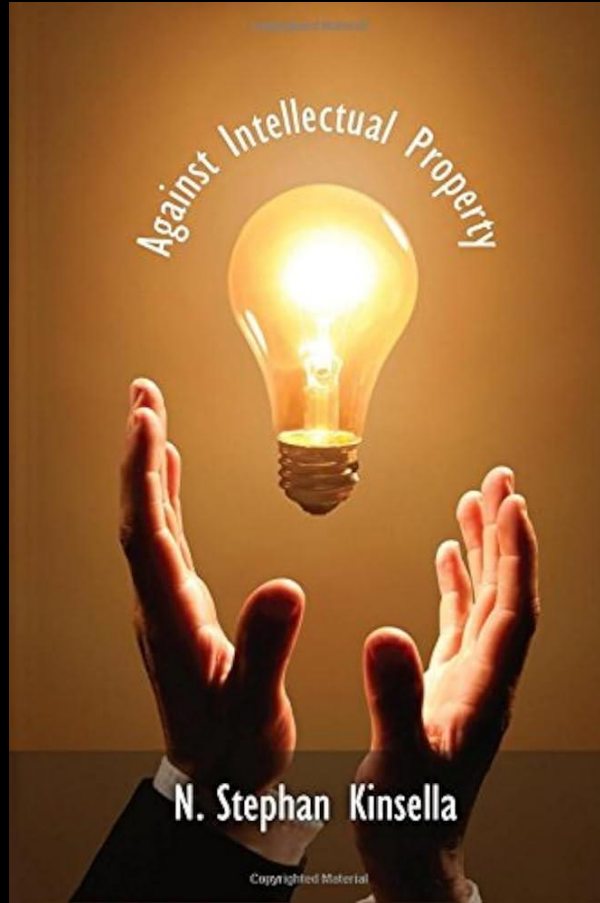
# Lawful ownership serves Justice by reducing conflict over scarce resource.



- **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.

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

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

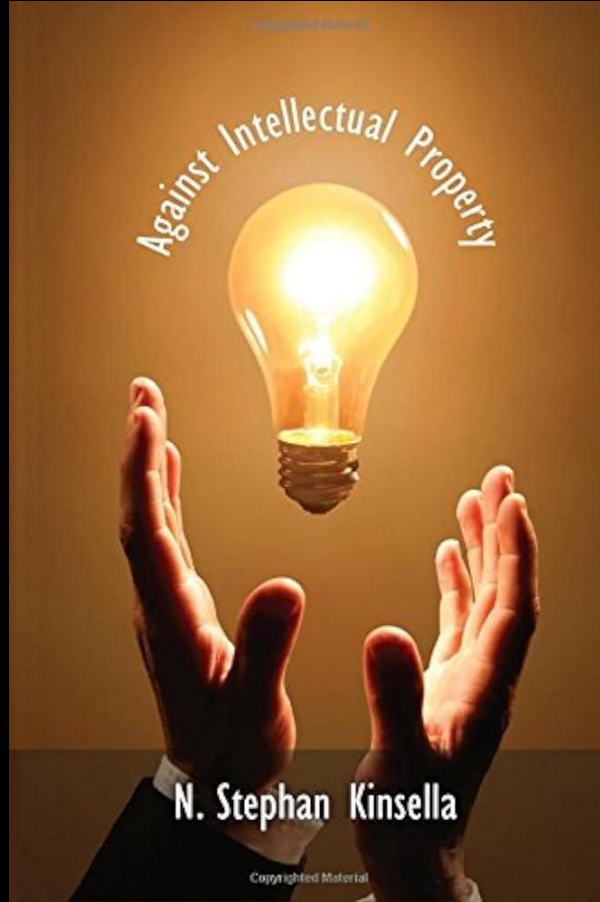


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- **Scarcity requires *rivalry* and *excludability*.**
  - Rivalry: Use by one precludes use by another.
  - Excludability: Ability to prevent others from using the resource.
- **Ideas are not scarce.**
  - Nonrival: you and I can both think of the 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.**



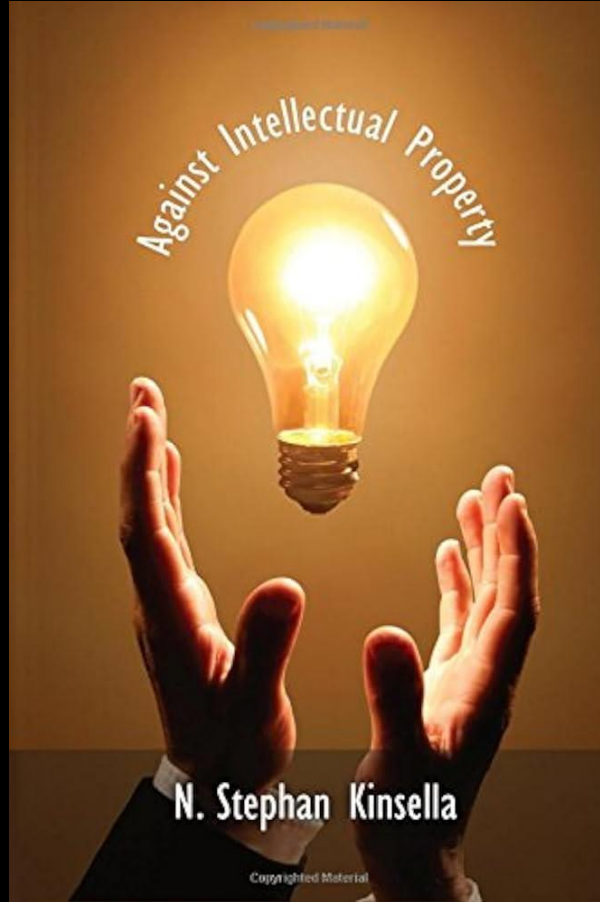
# IP legislation creates conflict over scarce resources; therefore, it is unjust.



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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.

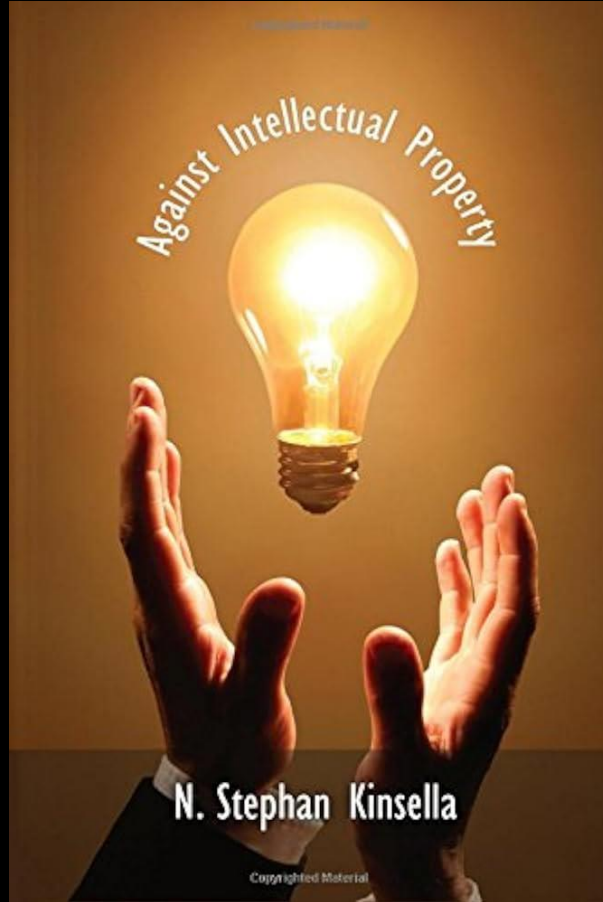
# IP infringement damages are unconsensual because they cannot be established consensually.



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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.

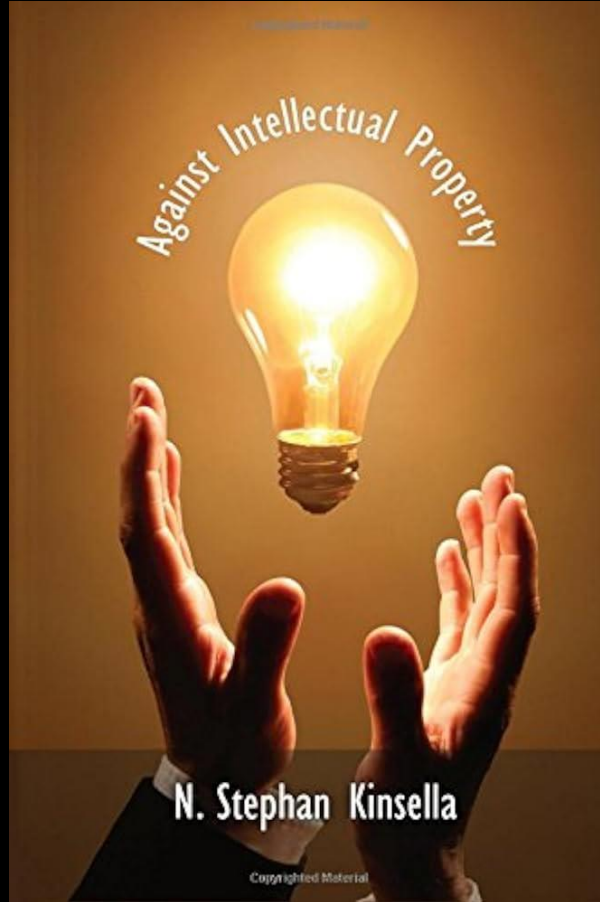
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- **IP has nothing to do with plagiarism:**
  - Plagiarism is about misrepresenting authorship. IP infringements exist even if true authorship is not an issue.
- **IP has nothing to do with fraud:**
  - The injured party of a fraud is the customer. 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.



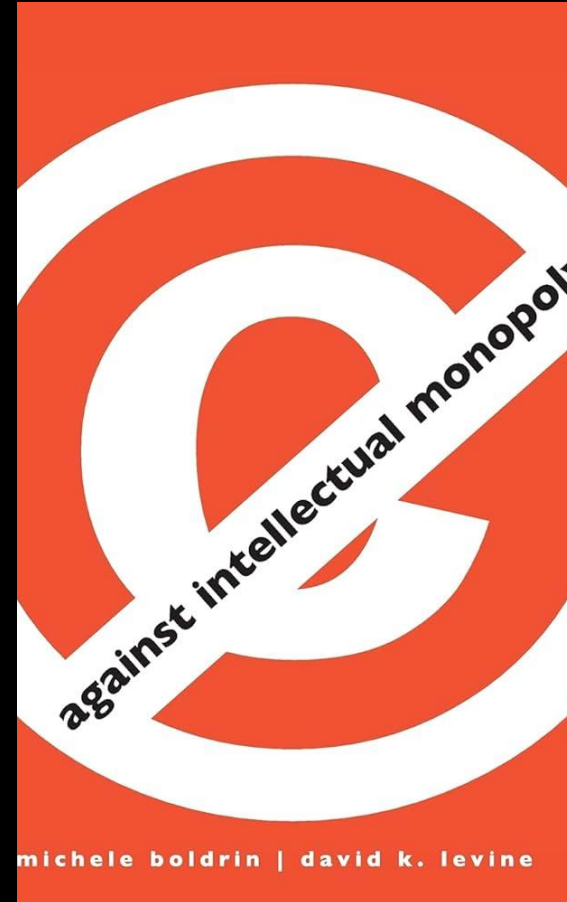
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- **Implicit repeal test** (*Penziner v. West American Finance Co.* (10 Cal 2d)):
  - “the two acts must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.”
    - **Irreconcilable:** IP abridges 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.

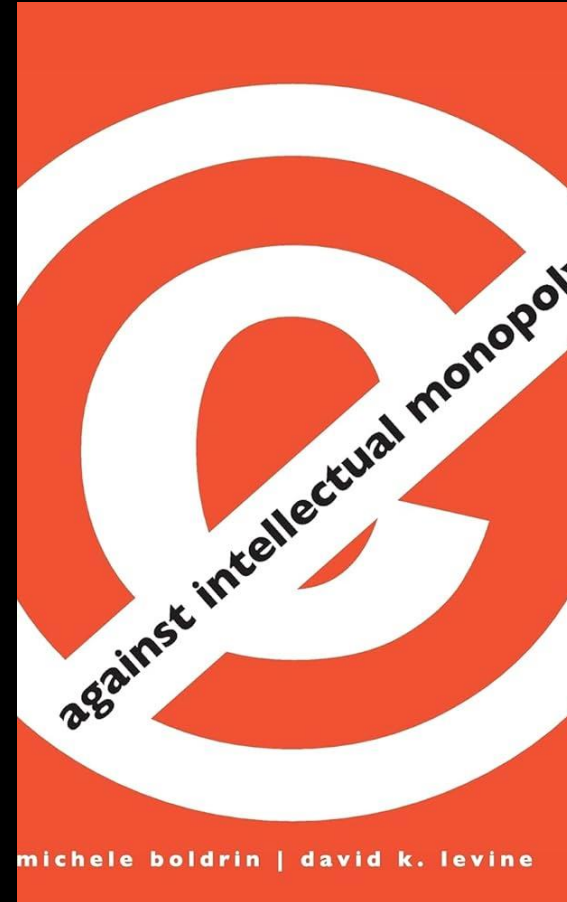
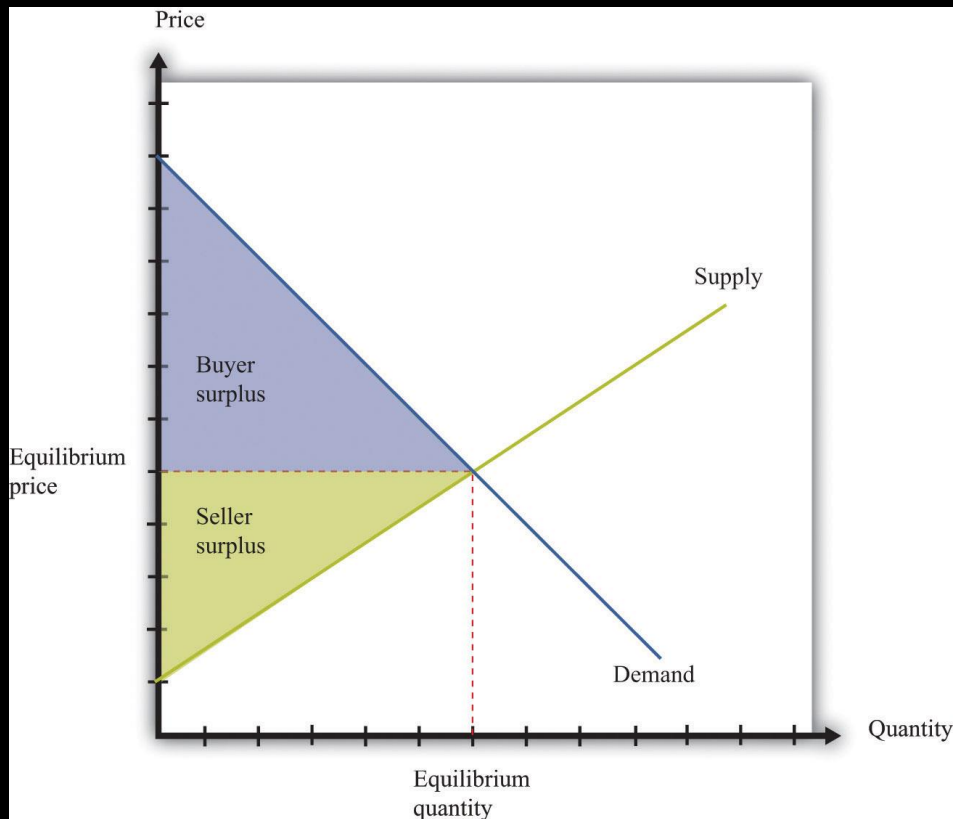


“Against Intellectual Monopoly.”  
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# Supply and demand: A competitive market is a socially optimal market.

- **Socially optimal output**

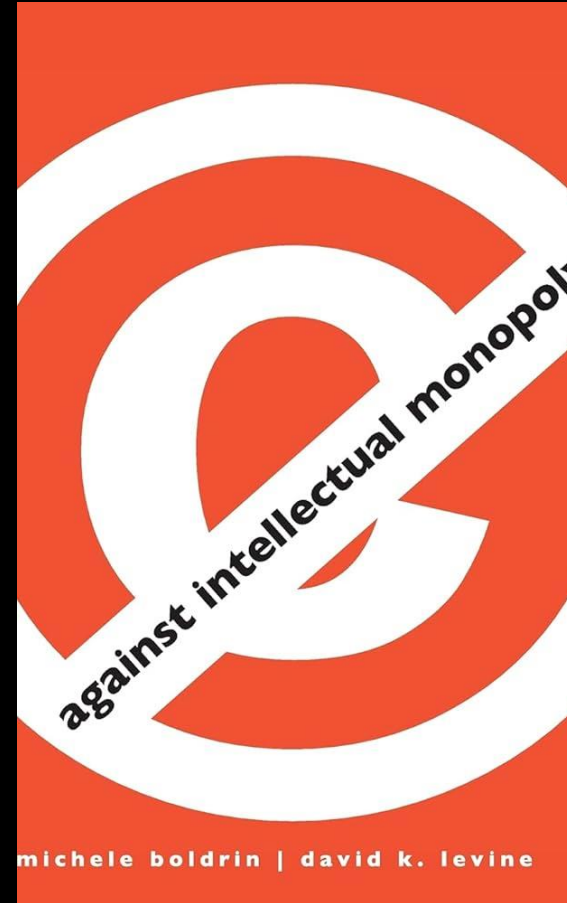


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# Monopolists are anti-social. That means they produce fewer goods at higher prices.

- **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*.

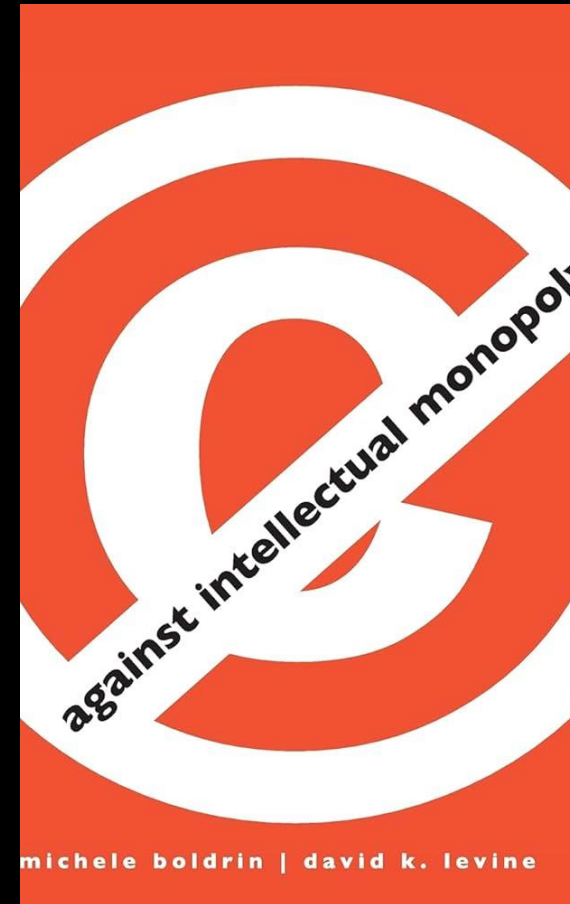
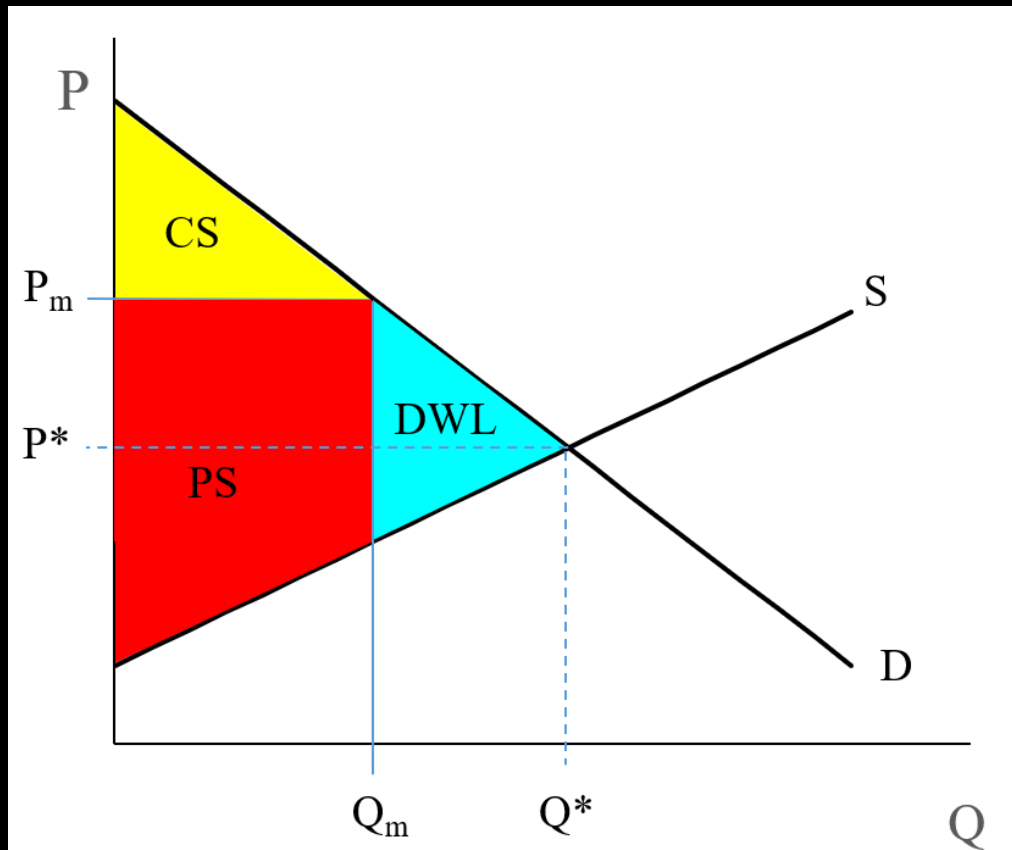


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# Supply and demand and legislation: Monopolists produce less and charge more.

- **Socially suboptimal output**

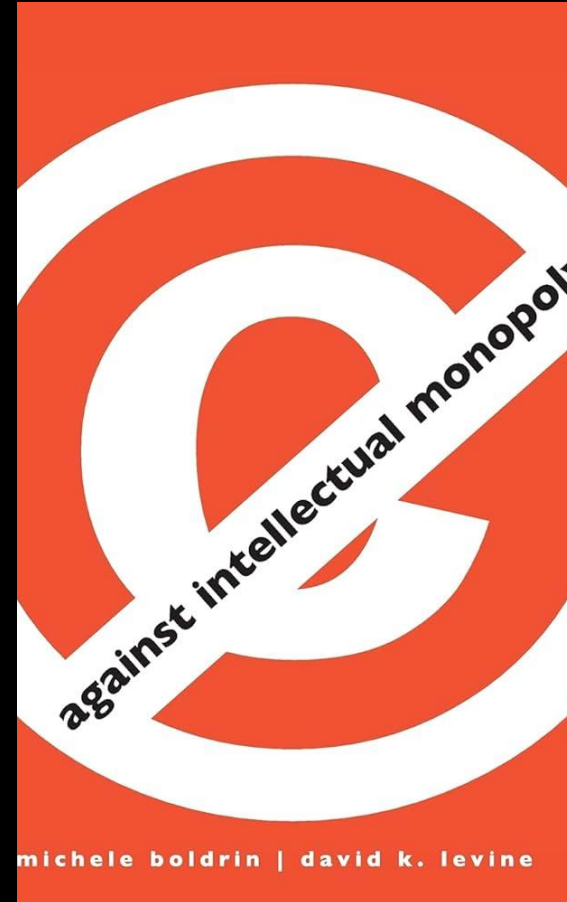


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# The Economic Point of View: IP as an inefficient, political monopoly.

- **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.

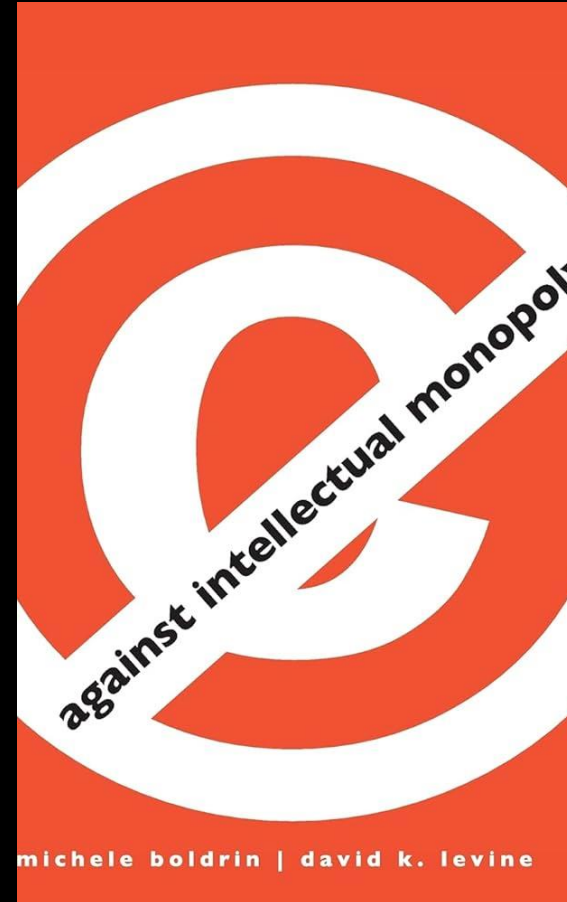


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# Business can, does, and will happen without IP.

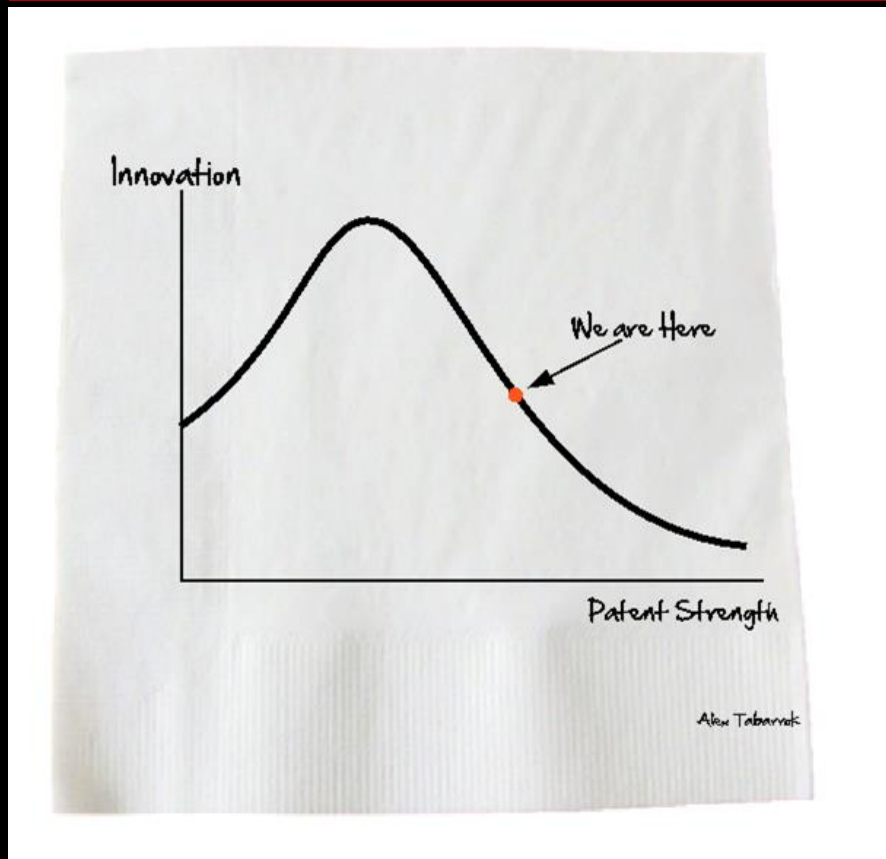
- **IP is not necessary to incentivize production of innovation and art**
  - Innovation and art existed for thousands of years before IP
- **IP has distorted business models.**
  - The costs in IP-heavy industries are *inflated* because the *profits* are supernormal.
  - No ex ante reason to believe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



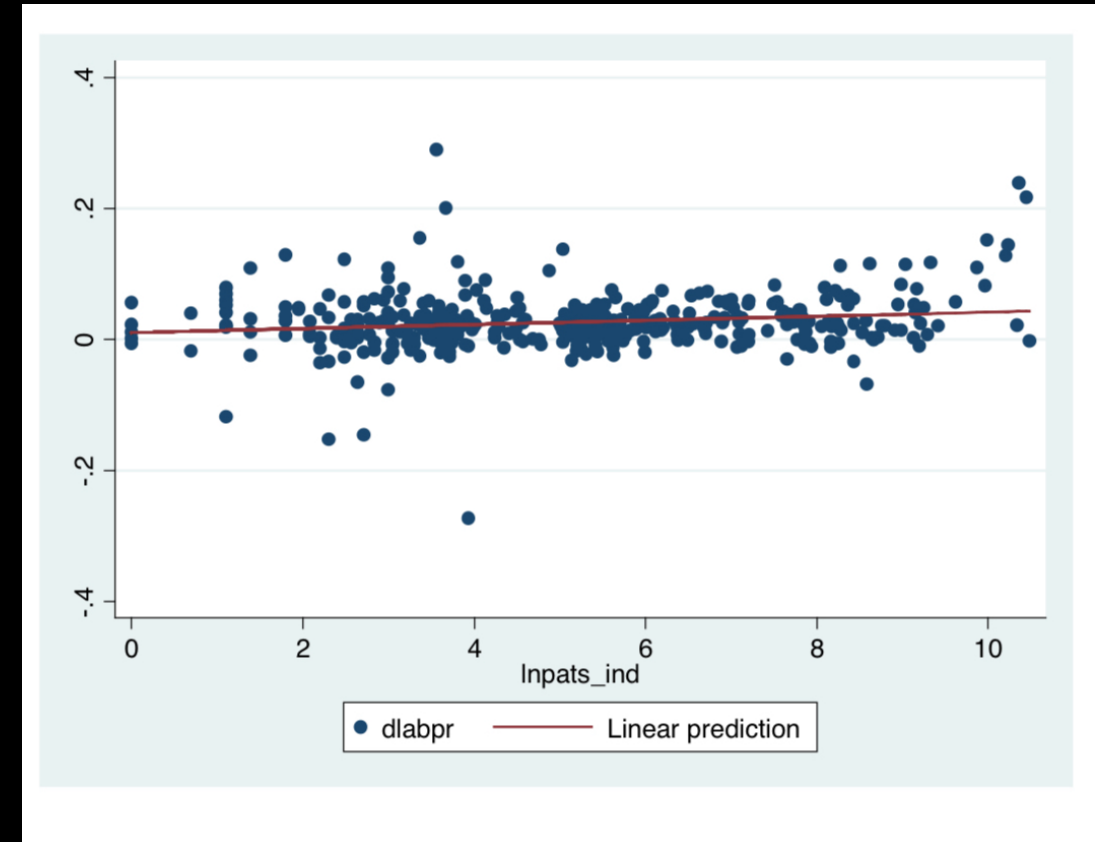
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# Fantasy vs. reality: Patents on net have no effect on productivity. The optimum is zero.



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 Patents*, 2012).

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

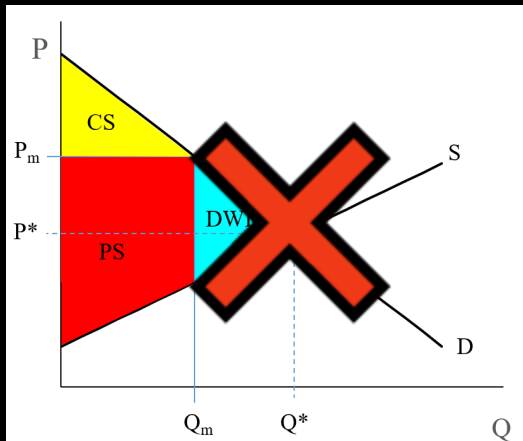


- This is akin to asking a slavery abolitionist, “without slavery, who will pick the cotton?”
- The existence of IP has led to the development of business models that depend on IP. Without IP, those business models will change.



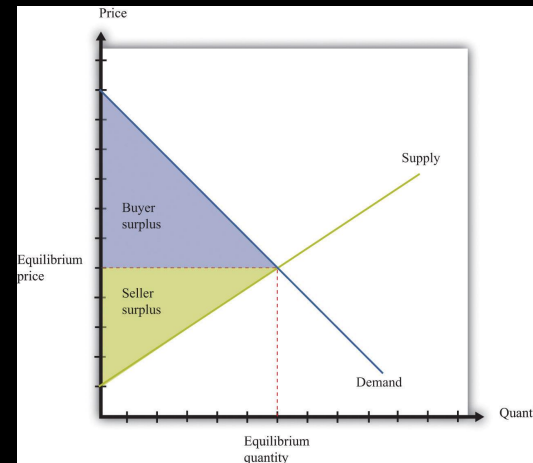
# Summary

## Rejecting:



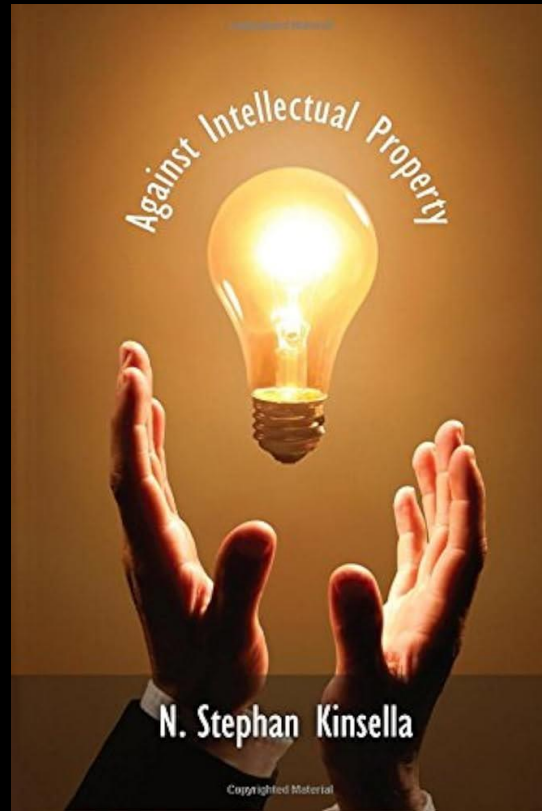
“  
Congress  
shall have power...  
to promote the progress  
of science and useful arts,  
by securing for limited  
times to authors and  
inventors the exclusive  
right to their  
respective writings  
and discoveries.”  
”  
ARTICLE I, SECTION 8  
THE CONSTITUTION OF THE UNITED STATES

## Accepting:



# Thank you!

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



# Questions?

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

