Intro to Intellectual Property

Antitrust
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What is intellectual property?

the kinds of IP

What is
"intellectual property"?

Copyrights
Trademarks
Patents
Trade Secrets
Rights of Publicity

Copyright ©

Protects	expression (text, images, recordings)
Requires	a mere modicum of creativity
Vests	automatically upon creation
Sustained by	*[nothing]*
Lasts	lifetime + 70 years; or 95 years
Theory	incentive to create; public goods problem

Patent PAT.

Protects	machines, inventions
Requires	patentable subject matter, novelty, nonobviousness, utility, enablement
Vests	after application, upon issuance by government
Sustained by	escalating maintenance fees
Lasts	somewhat less than 20 years (from date of issuance to 20 years from date of application)
Theory	incentive to invent and disclose; public goods problem

How is it lost?

©	*Very difficult*
Pat.	Unpaid fees; successful challenge

Defenses include …

©	Fair use, first-sale
Pat.	Invalidity, first-sale

Remedies include …

©	Injunctions; restitution (of D's wrongful gains); statutory damages up to $150K per infringement
Pat.	Injunctions; royalties; treble damages

Patent ^{PAT.}

The five requirements for a valid patent:

1. patentable subject matter
2. novelty
3. nonobviousness
4. utility
5. enablement

What is "intellectual property"?

"intellectual property infringement"

"intellectual property infringement"
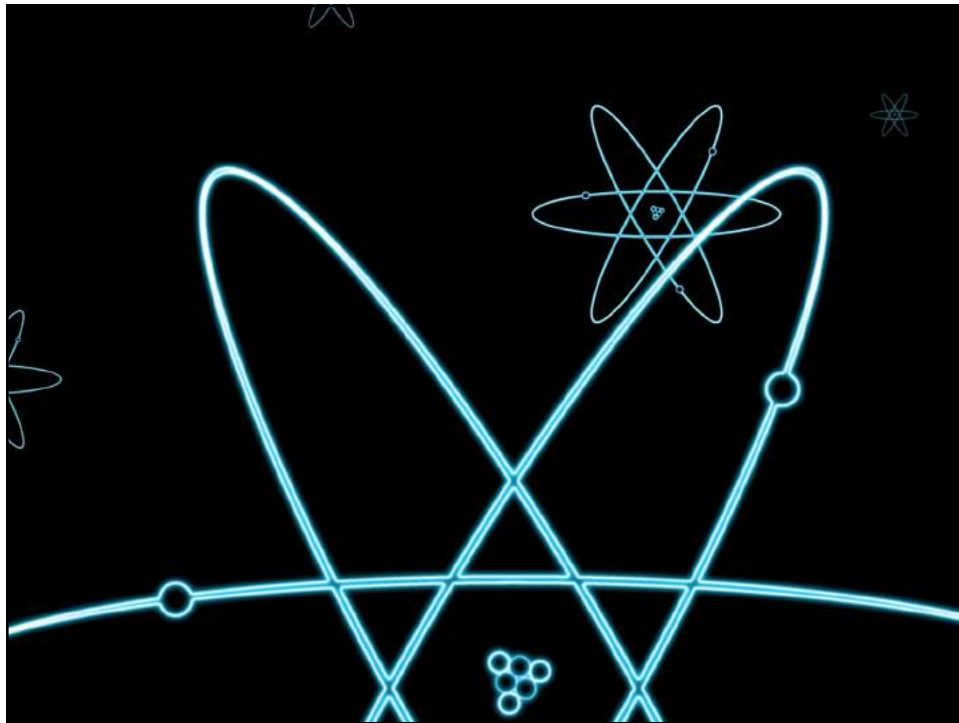
Is it
"property"?

Is it
"property"?
It depends on who you ask.

Is the right to receive government welfare property?
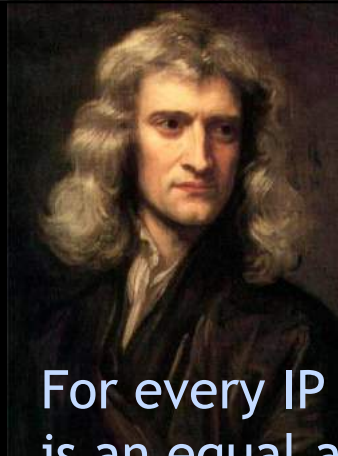
Is a professional license property?

Is a government pension property?

What's "intellectual" about it?

Newton's Third
Law of Motion

For every action, there is an
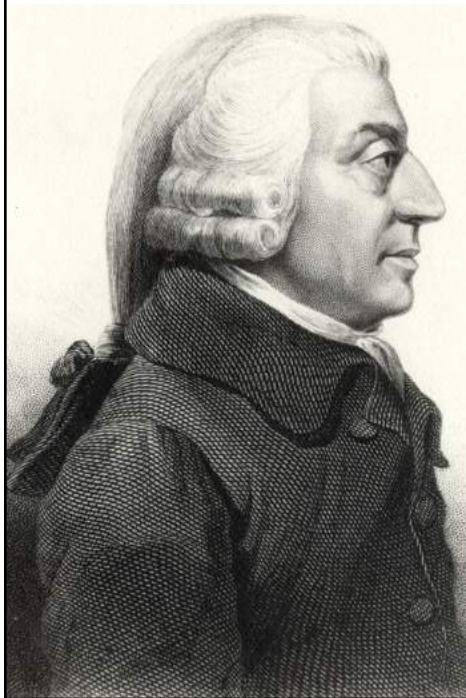equal and opposite reaction

Newton's Third
Law of IP

For every IP entitlement, there
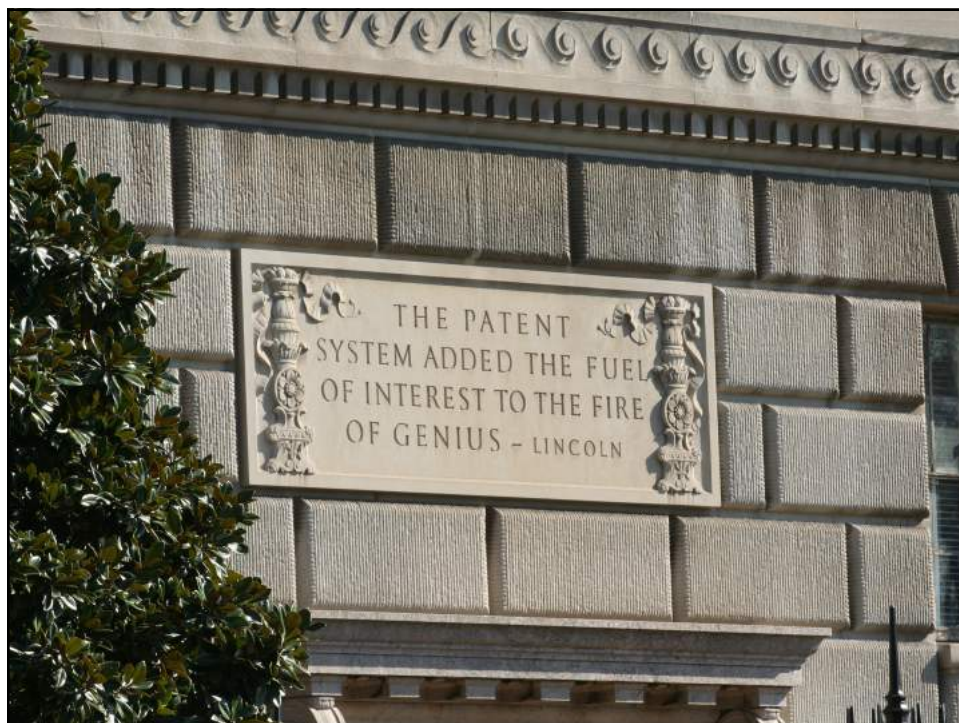is an equal and opposite
reduction in freedom.

Why is intellectual property law necessary (if it is)?

Classical Economics

Adam Smith

excludability
rivalrousness

nonexcludable
nonrival

The compensation / incentive problem

THE PATENT SYSTEM ADDED THE FUEL OF INTEREST TO THE FIRE OF GENIUS – LINCOLN

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;

How did intellectual property law come to be?
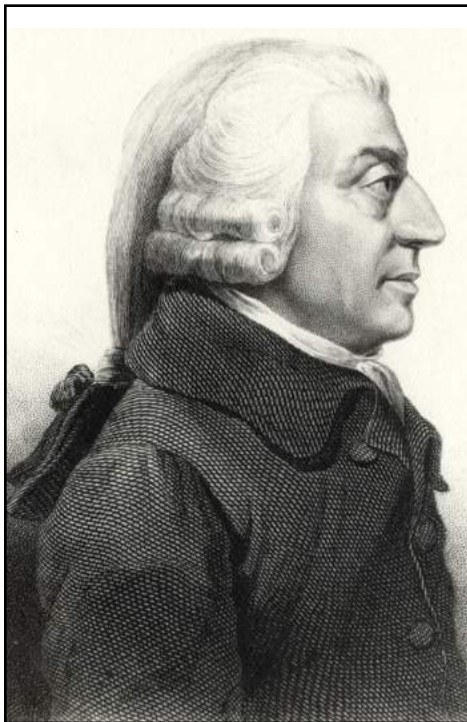
Queen Mary

Queen Elizabeth

Queen Anne

Adam Smith

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raison d'être

Copyright or patent monopoly

Copyright or patent monopoly
with no price discrimination

Copyright or patent monopoly
with perfect price discrimination

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Copyright or patent monopoly
with perfect price discrimination

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Producer
Surplus

Demand & Marginal
Revenue

Marginal
Cost

#

Copyright or patent monopoly with perfect price discrimination