



# Intro to Intellectual Property

Antitrust  
Eric E. Johnson  
ericejohnson.com



Kononmark  
Most rights sharable

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	<i>[nothing]</i>
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?

©	<i>Very difficult</i>
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 <sup>PAT.</sup>

The five requirements for a valid patent:

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

## Blocking patents ...

Patents do not give you the legal ability to make, sell, or use your invention. They only give you the legal ability to stop others from making, selling, using your invention.

If you got a patent on the chair, and I got a patent for the improvement of connecting the legs with curved runners, then neither of us can make a rocking chair without getting a license from the other. We can call these “blocking patents.”

What is  
“intellectual property”?

“intellectual property  
infringement”



“intellectual property  
infringement”

Is it  
“property”?



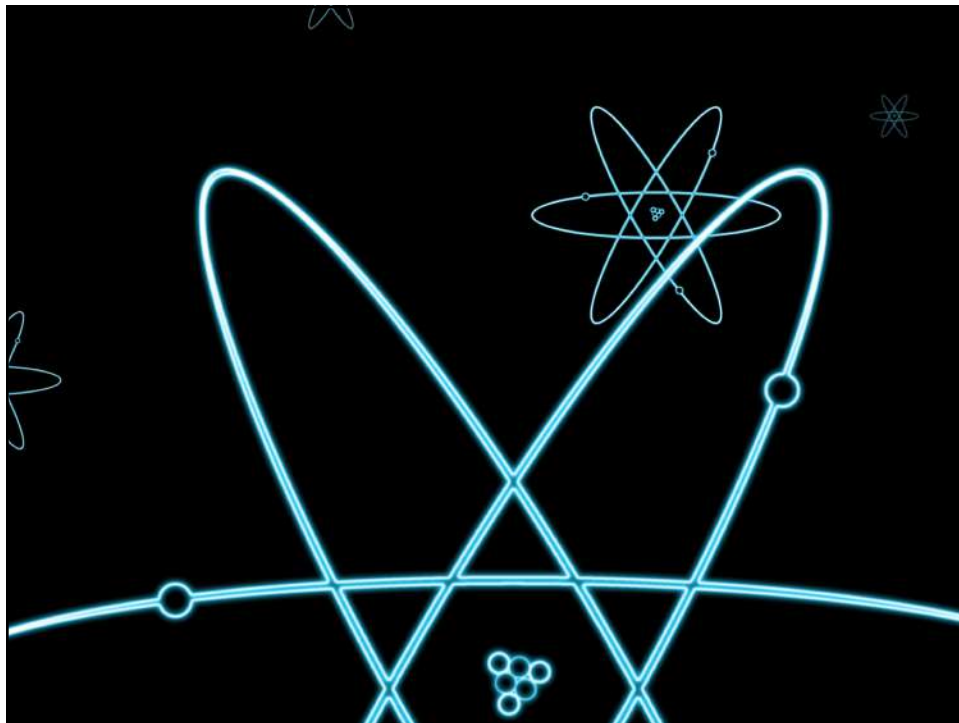
Is it  
“property”?  
*It depends on who you ask.*

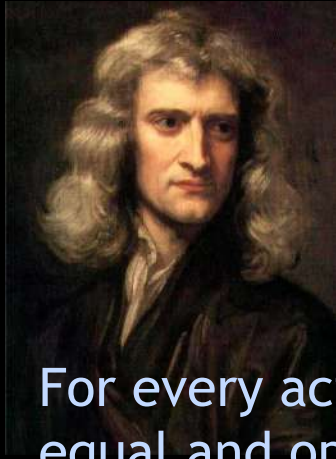
Is the right to receive  
government welfare  
property?

Is a professional license  
property?

Is a government pension  
property?

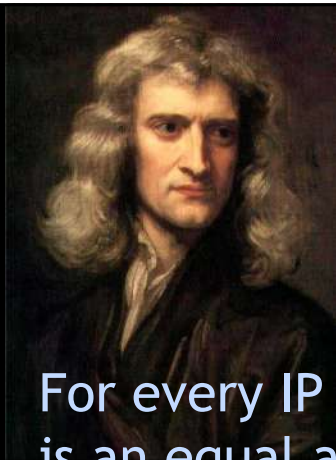
What's  
"intellectual"  
about it?





## Newton's Third Law of Motion

For every action, there is an  
equal and opposite reaction

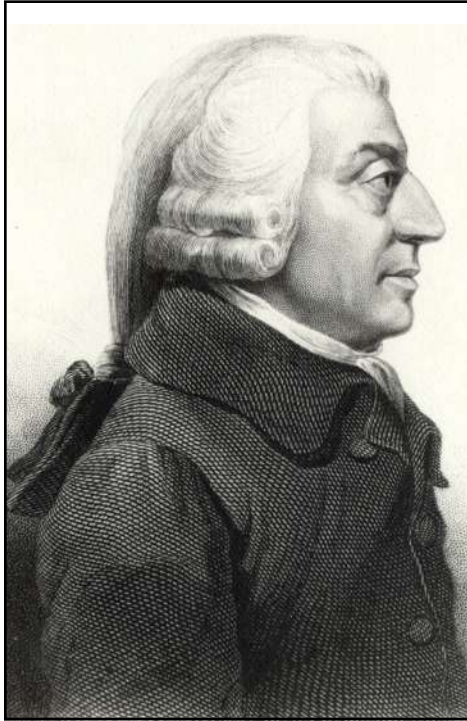


## Newton's Third Law of IP

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

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

*Classical  
Economics*

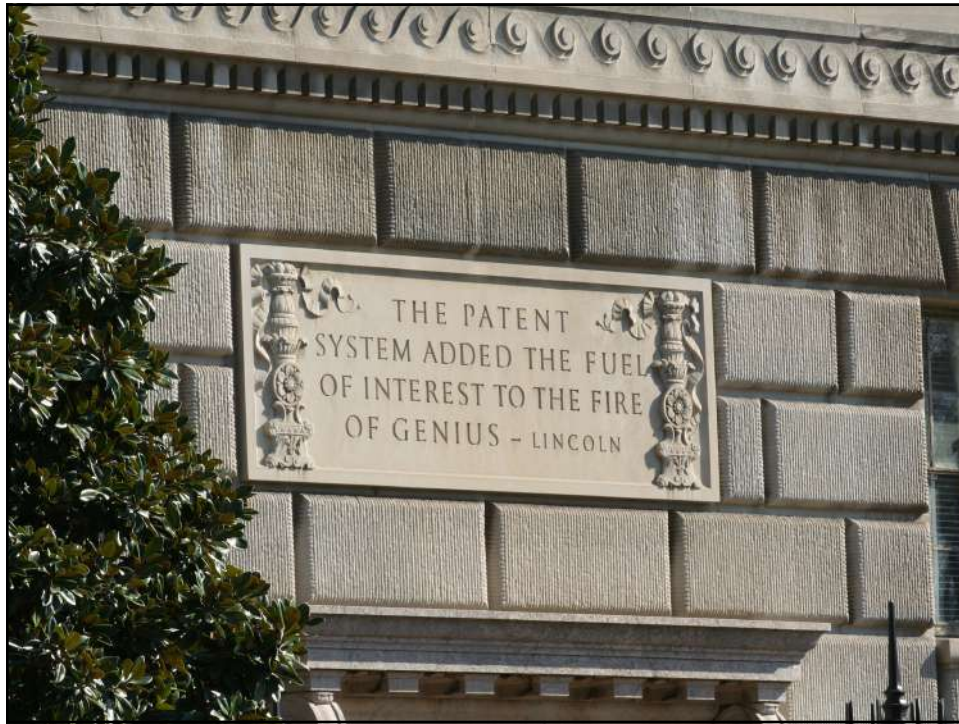


Adam Smith









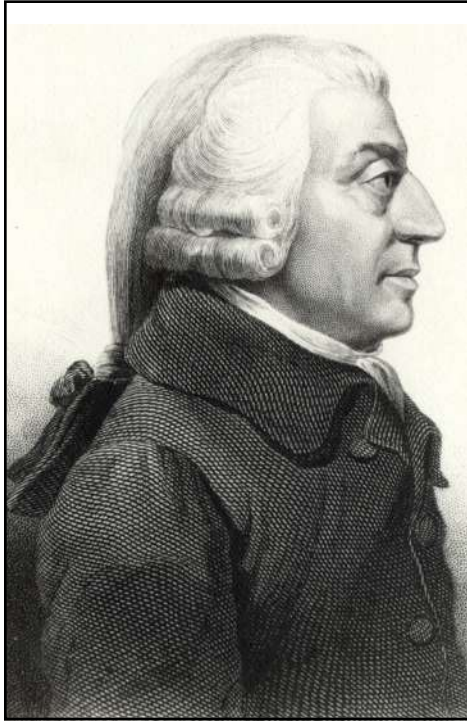
*To promote the Progress of Science and useful Arts,  
by securing for limited Times to Authors and Inventors  
the exclusive Right to their respective Writings and  
Discoveries;*



How did  
intellectual  
property law  
come to be?






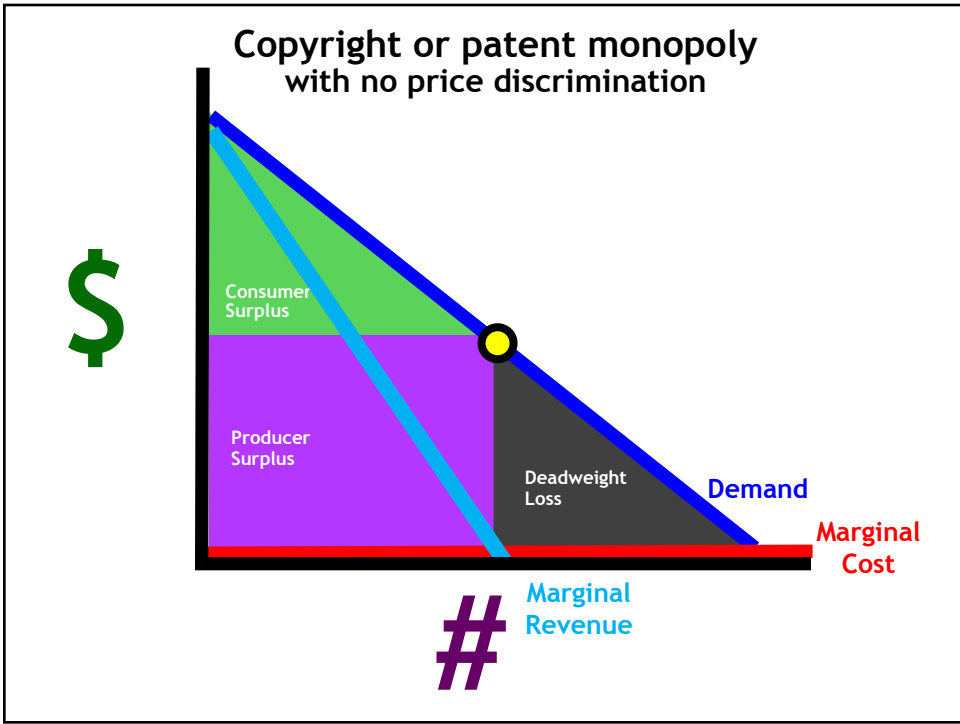
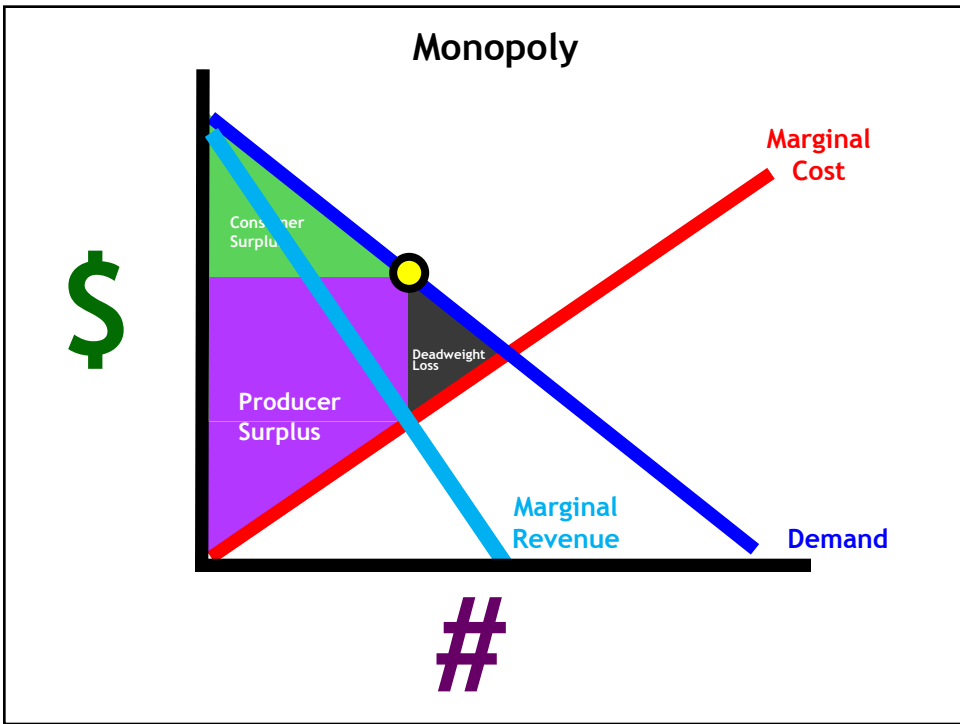


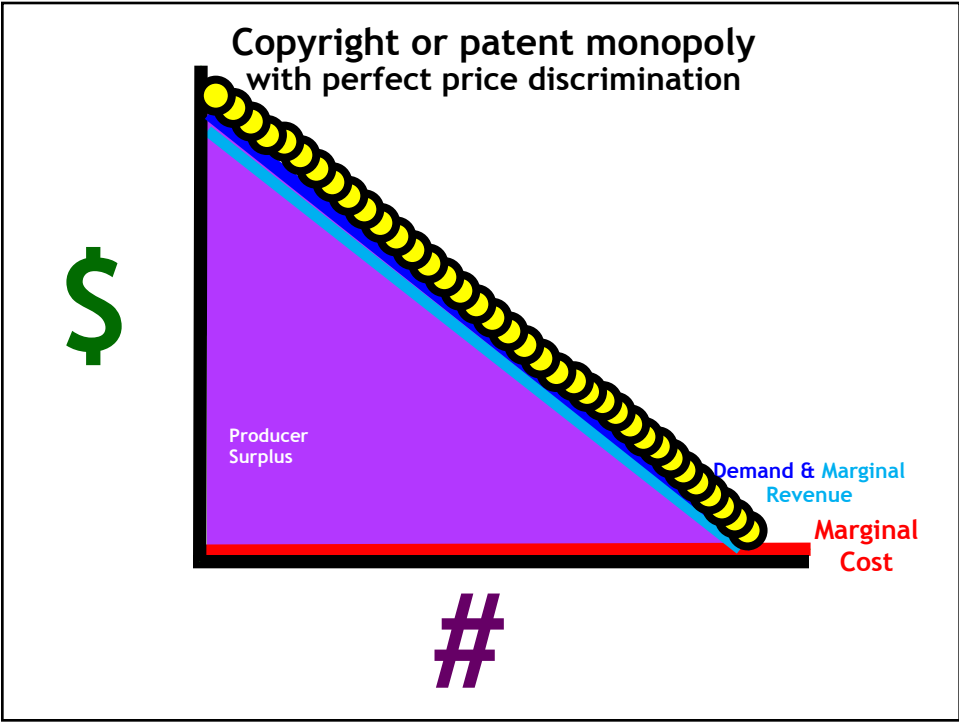
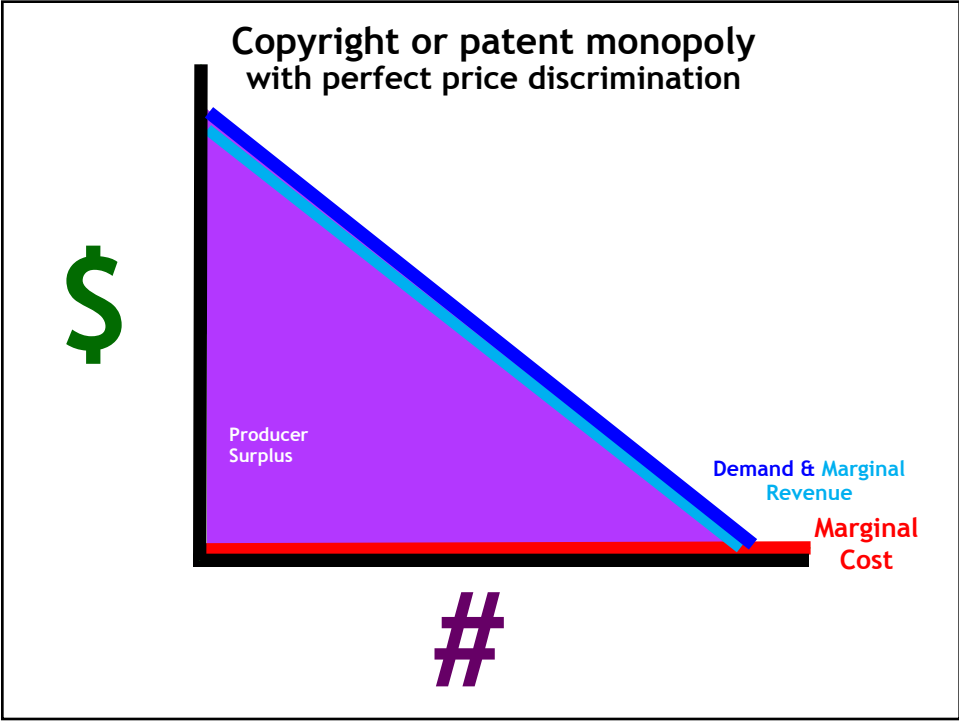
Adam Smith

*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;*

**raison d'être**

**d'être**  **raison**





### **How could patents have high or low value? (1/2)**

- The technology might be valuable or not valuable.
- There might be alternative technologies (which may or may not be patented themselves).
- A patent could be close to its expiration date.
- There might be blocking patents, or arguably blocking patents.
  - Those blocking patents themselves might be weak or strong.
- A patent might be vulnerable to a patent validity challenge, perhaps because of arguably anticipating prior art that was not reviewed by the patent office.
  - Note that once one defendant gets a patent invalidated in one litigation, the patent is invalidated against all potential defendants.

### **How could patents have high or low value? (2/2)**

- Some patents will have broader claims, that cover more potential products, methods, and uses.
  - The broader the claims, the wider the scope of possible infringement (tending toward strength), and the greater the scope for potentially invalidating prior art (tending toward weakness).
- Some patents will have narrower claims, that cover fewer potential products, methods, and uses.
  - The narrower the claims, the smaller the scope of possible infringement (tending toward weakness), and the smaller the scope for potentially invalidating prior art (tending toward strength).
- *Note that patents generally have a mix of broad and narrow claims to get the best of both worlds, but in the wash, some patents will be stronger than others.*