



Intro to Intellectual Property

Antitrust
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Konomark
Most rights sharable

What is
intellectual
property?

What is
“intellectual property”?

What is
“intellectual property”?

It’s a label for a variety
of distinct legal regimes.

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 PAT.

Five requirements for a valid patent:

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

Patent PAT.

Five requirements for a valid patent:

- 1.patentable subject matter
- 2.novelty
 - to be novel, there can be no invalidating “prior art”
- 1.nonobviousness
- 2.utility
- 3.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”?

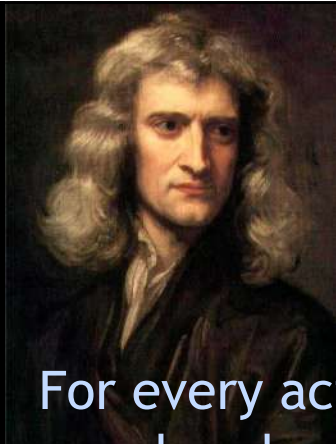
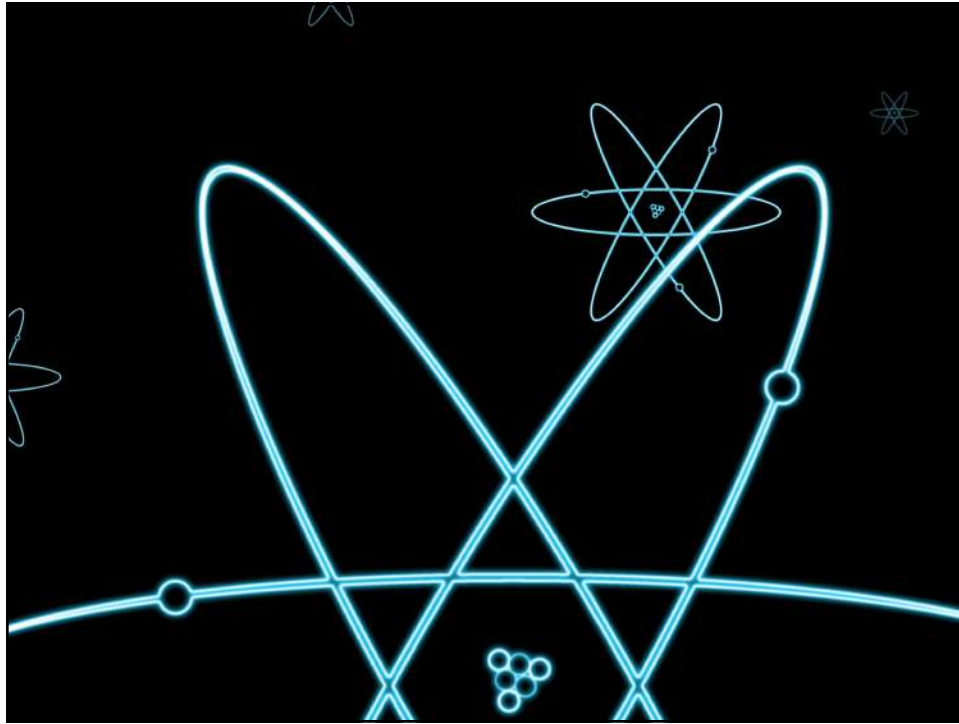
Is it
“property”?
It depends on who you ask.

Is the right to receive
government welfare
property?

Is a professional license
property?

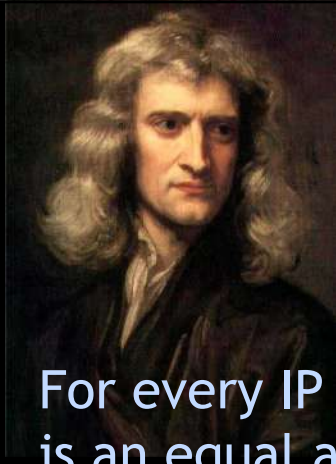
Is a government pension
property?

What's
"intellectual"
about it?



Newton's Third Law of Motion

For every action, there is an equal and opposite reaction

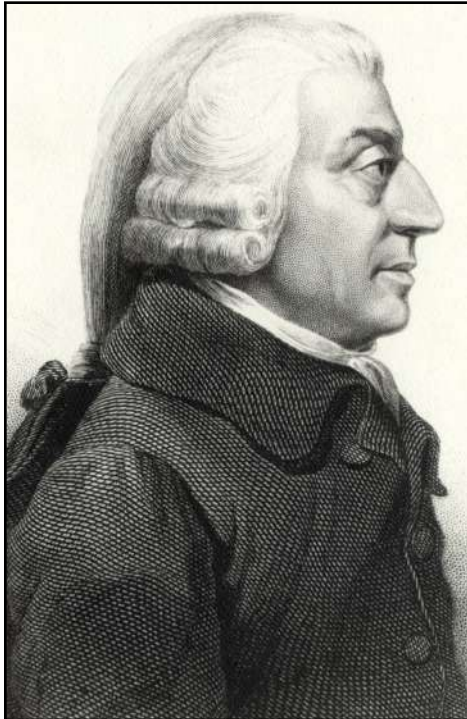


Newton's Third Law of IP

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

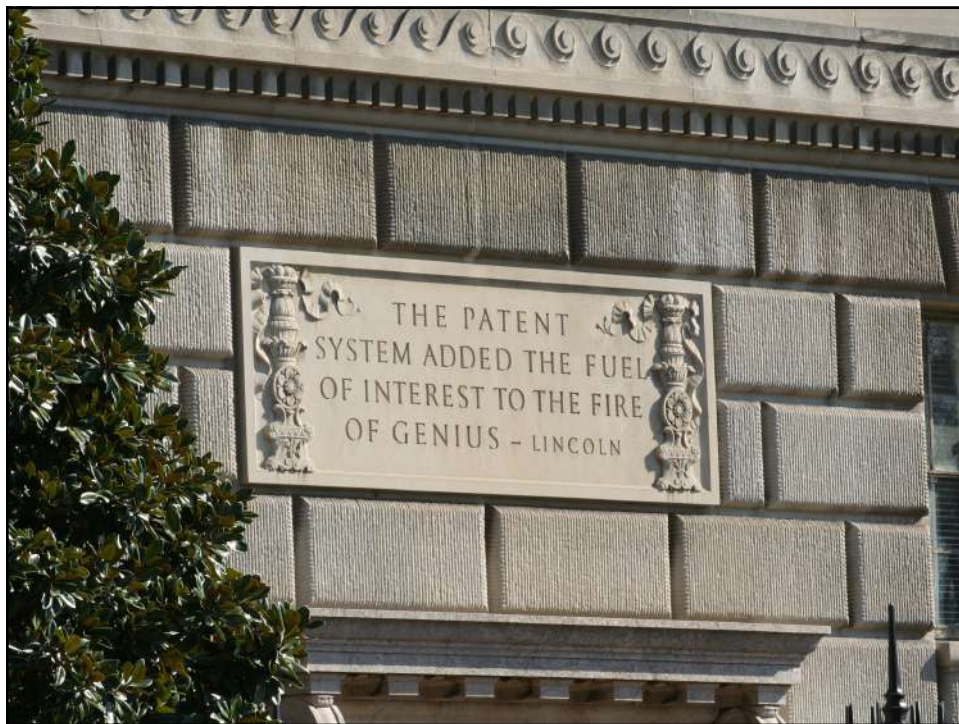
**Why is intellectual
property law
necessary (if it is)?**

*Classical
Economics*



Adam Smith





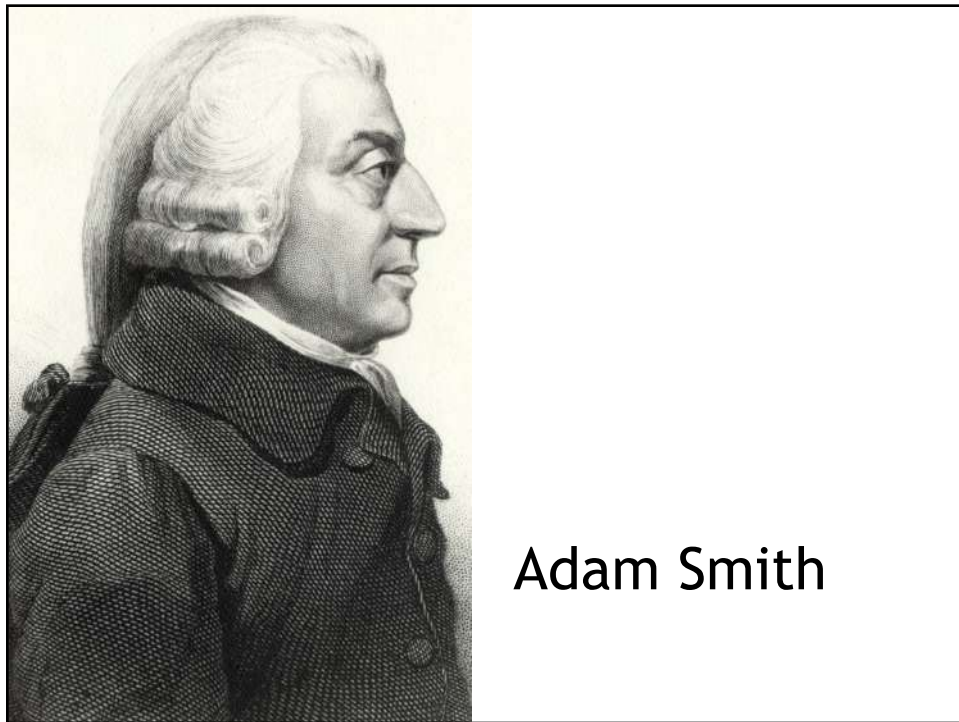
*To promote the Progress of Science and useful Arts,
by securing for limited Times to Authors and Inventors
the exclusive Right to their respective Writings and
Discoveries;*

How did
intellectual
property law
come to be?





Queen Anne

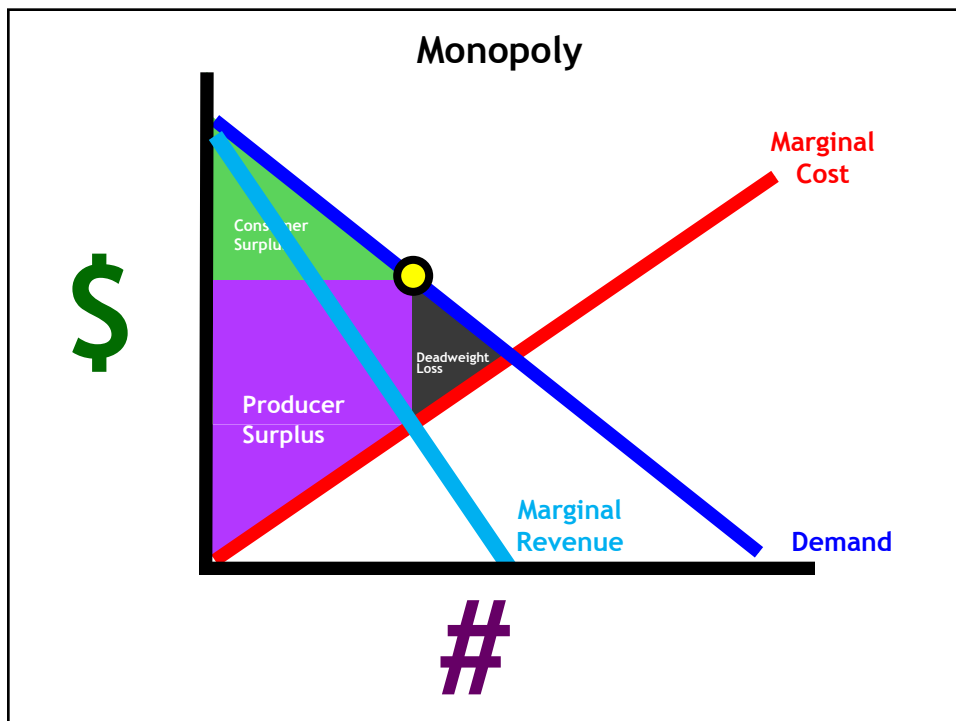


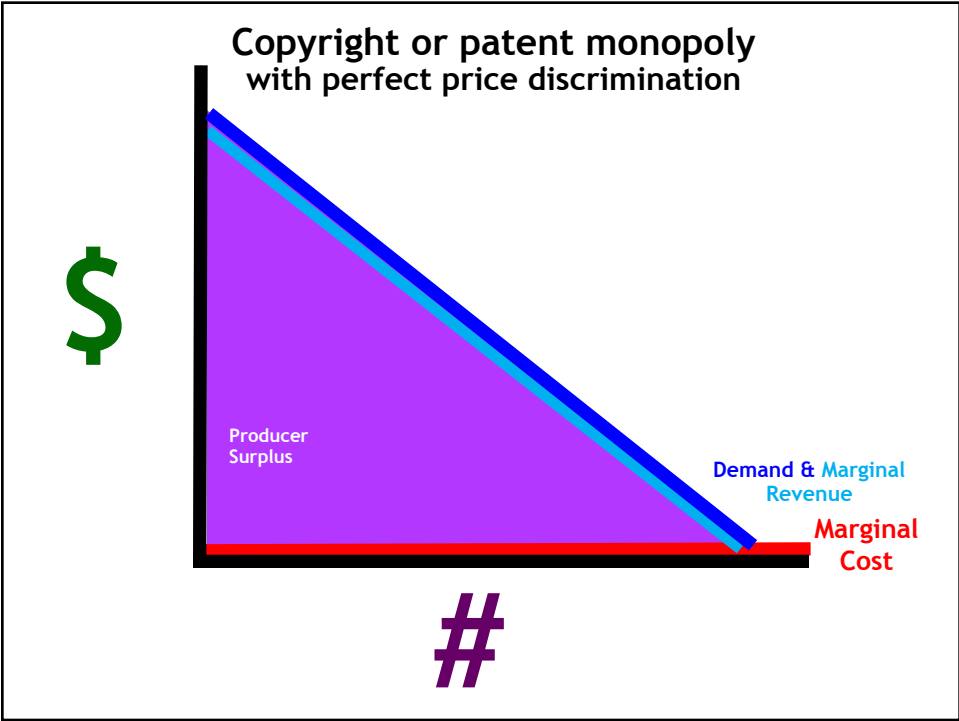
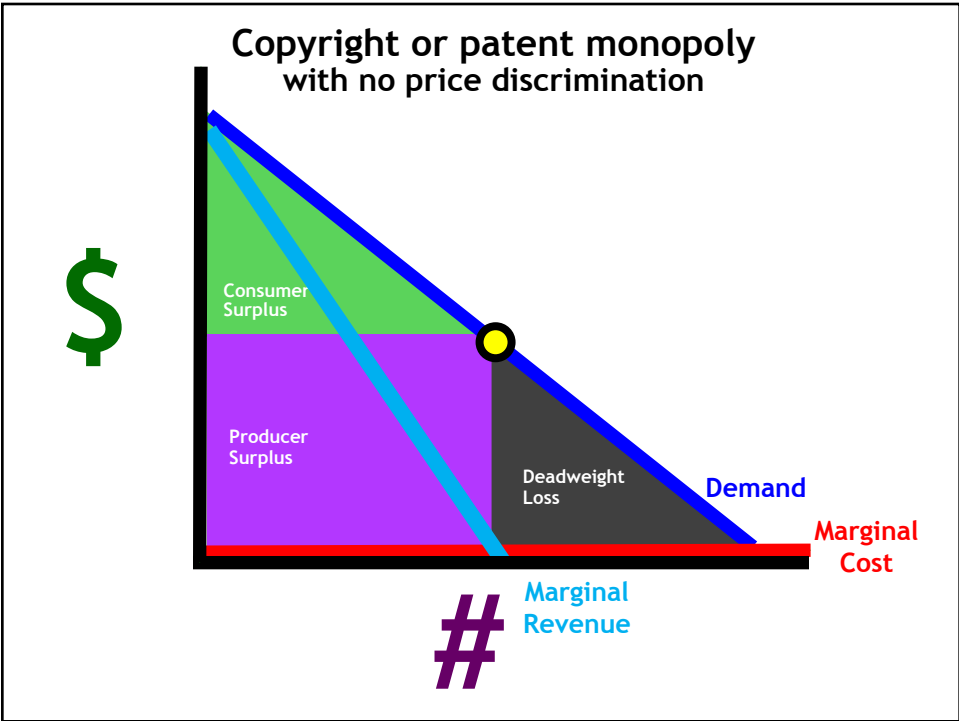
Adam Smith

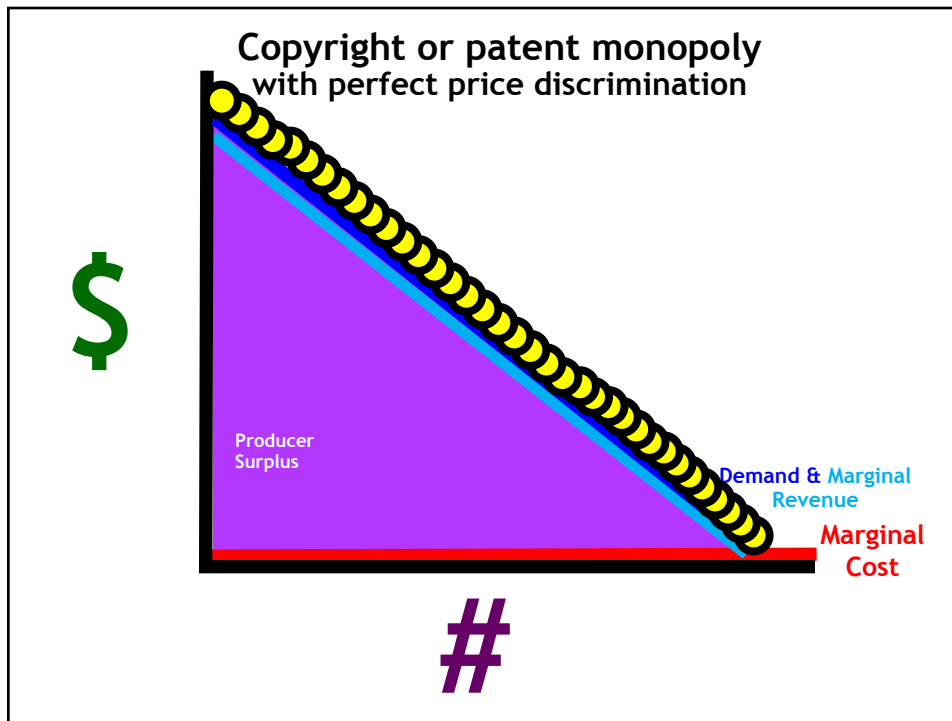
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raison d'être

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.*