This course will provide an overview of economic approaches to the analysis of intellectual property law. We will begin by discussing traditional economic approaches to IP theory. Emerging phenomena such as user communities on the Internet, open source software, and creativity in the absence of IP protection have cast doubt on whether traditional economic theories of the IP system fully capture important aspects of innovation economics. We will therefore broaden our horizons by reviewing theoretical approaches to IP that attempt to incorporate factors such as intrinsic motivation, behavioral biases, social norms, and institutional aspects into the theory. We will discuss whether and in what ways current findings in economics, psychology and other social sciences should lead us to recalibrate the IP system. We will also consider economic instruments for rewarding innovators outside the IP system, such as prizes. Examples will come from patent, copyright, trademark and design protection, in both the online and the offline worlds.

Professor Contact Information and Office Hours

Professor Strandburg
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Office Hours: Th 1:00-3:00 pm (beginning 1/30) or by email appointment

Professor Bechtold
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Office hours: by email appointment

Required Course Materials
Suzanne Scotchmer, Innovation and Incentives (MIT Press 2004)
Materials posted on NYU Classes

1. **Reading.** Required reading must be completed prior to class. Reading assignments will include sections from the Scotchmer book, along with readings posted on NYU Classes or available online. Please refer to the Reading Assignment sheet. **Updates to the reading assignments may be posted on Blackboard by Friday evening each week so check regularly!**
2. **Class Participation Credit.** Class will be a combination of lecture and discussion depending on the topic. Each student is expected to attend regularly. We “call on” students only occasionally. Instead each student is expected to take the initiative to participate voluntarily in discussion a minimum of 6 times during the semester. More credit will be given for more participation and for especially insightful participation. The ability to assert yourself and to make sure that you understand what you are being told is essential to the practice of law. At the end of the semester, each student will complete an “affidavit of participation” attesting to the approximate number of times he or she volunteered in class.

3. **Grading.** Course grades will be based primarily on the final examination, with grade “bumps” for participation in class. The exam will be a full period take-home examination. More information will be given near the end of the semester.

4. **Class Schedule.** Class meets on Tuesdays 12:00-1:15pm and on Thursdays 10:00am – 11:15pm, with the following exceptions:

   2/18 NO CLASS

5. **NYU Classes.** Course handouts, updated reading assignments, and other important materials will be posted on the site. We will also send email to the class using NYU Classes.

6. **Recommended prerequisites.** Having taken copyright, patent, trademark, or IP survey is recommended, although not required.
NOTE: When reading assigned chapters in the Scotchmer book you may skip the Technical Notes.

I. IP Basics: The Orthodox Economic View

T 1/21 Basic Concepts
• Scotchmer, Ch. 2 (skip 2.4 and 2.5)

Th 1/23 Designing Patent and Copyright Doctrine
• Scotchmer, Ch. 4

T 1/28 Trademarks, Designs & Geographical Indications

Th 1/30 Trade Secrets

II. Economics of Enforcement

T 2/4 Property Rules versus Liability Rules
• Peter S. Menell and Michael J. Meurer, Notice Failure and Notice Externalities, 5 J. of Legal Analysis 1, 7-13, 18-21, 26-29 (2013)
Th 2/6  Economics of IP Litigation
• Scotchmer, Ch. 7 (omit 7.2, 7.3, 7.4)
• Mark Lemley & Carl Shapiro, Probabilistic Patents, 19 J. Econ. Persp. 75 (2005), 75-83, 85-95

III. Economics of Cumulative Innovation

T 2/11  Cumulative Innovation Basics
• Scotchmer, Ch. 5 (omit 5.3, 5.6)

Th 2/13 Overlapping IP rights
• Kellogg Co. v. Nat’l Biscuit Co., 305 U.S. 111 (1938)
• Sears, Roebuck & Co. v. Stiffel Co., 376 U.S. 225 (1964)
• Traffic Devices v. Marketing Displays, 532 U.S. 23 (2001)

T 2/18 (LEGISLATIVE MONDAY): No class

T 2/20  Prospect Theory and Licensing
• Scotchmer, Ch. 5.6
• NOTE: could have included Christiansen disruptive innovation here

T 2/25 Patent Thickets, Hold-up and Anticommons
• Scotchmer, Ch. 5.3
• Richard Gilbert & Carl Shapiro, An Economic Analysis of Unilateral Refusals to License Intellectual Property, 93 Proceedings of the National Academy of Sciences of the USA 12749-12755 (1996) (was already assigned last week)
• Michael Heller & Rebecca Eisenberg, Can Patents Deter Innovation? The Anticommons in Biomedical Research, Science 280 (1998), 698-701

IV. IP and Institutional Choices

Th 2/27 Modularity, Product Design and Intellectual Property
• Carliss Y. Baldwin, Modularity and Organizations (Working Paper 2012), pp. 1-8
• Henry E. Smith, Property as the Law of Things, 125 Harv. L. Rev. 1691 (2012), Part II (pp. 1700-16)

T 3/4 IP and Theories of the Firm
• Margaret M. Blair, Erin O’Hara O’Connor and Gregg Kirchhoefer, Outsourcing, Modularity and the Theory of the Firm, 2011 Brigham Young U. L. Rev. 263, pp. 263-89
• Anthony J. Casey and Andres Sawicki, Copyright in Teams, 80 U. Chi. L. Rev. 1683 (2013), pp. 1683-1741 (read entire article)

T 3/11 IP, Contracts and Industry Structure
• Margaret M. Blair, Erin O’Hara O’Connor and Gregg Kirchhoefer, Outsourcing, Modularity and the Theory of the Firm, 2011 Brigham Young U. L. Rev. 263, pp. 289-302

Th 3/13 Ideas as Infrastructure and Commons
• Brett M. Frischmann, Intellectual Infrastructure, Ch. 5, INFRASTRUCTURE: THE SOCIAL VALUE OF SHARED RESOURCES (2012), Read Sections C, Appendix (pp. 275-301, 305-14)
• AMP v. Myriad, Brief of Academics in Law, Medicine and Health Policy, pp. 4-11
• Alice Corp. v. CLS Bank, Brief of Law, Business and Economics Scholars, pp. 2-4, 18-26

T 3/18 & Th 3/20 Spring Break (No classes)

T 3/25 Distributive Effects of IP
• Molly Shaffer van Houweling, Distributive Values in Copyright, 83 Texas L. Rev. 1535 (2005), pp. 1536-1550, 1562-1573


V. Challenges to Orthodox Models of Individual Behavior

Th 3/27 User Incentives To Innovate and Create
- Eric von Hippel, Democratizing Innovation (2005), Ch. 1, pp. 4-10
- Amicus Brief of American College of Medical Genetics et al in Mayo v. Prometheus, pp. 7-9, 14-18 (I.B&C), 31-33
- Amicus Brief of Intellectual Property Professors in KSR v. Teleflex, pp. 2-4, 10-21(III & IV)

T 4/1 Behavioral Law & Economics & IP Part I
- Herz/Schunk/Zehnder, How Do Judgmental Overconfidence and Overoptimism Shape Innovative Activity? 83 Games & Economic Behavior 1 (2014), Sections 1-2, 4, 6

Th 4/3 Behavioral Law & Economics & IP Part II
- Christopher Buccafusco and Christopher Jon Sprigman, The Creativity Effect, 78 U. Chi. L. Rev. 31 (2011), pp. 31-52

T 4/8 Trademarks, Brands, Designs & Consumer Psychology
- Femke van Horen & Rik Pieters, When High-Similarity Copycats Lose and Moderate-Similarity Copycats Gain: The Impact of Comparative Evaluation, Journal of Marketing Research 49 (2011), 81-93

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VI. IP and Economics of Cooperation

Th 4/10 Incentives, Individual Actors, and Firms (Entrepreneurs and Employees)


T 4/15 Social Norms-Based Innovation

• Katherine J. Strandburg, Who’s in the Club?: A Response to Oliar and Sprigman, 95 Virginia Law Review Online 1, 1-7 (2009)

Th 4/17 Open Source Approaches to Innovation

• Charlie Schweik, Toward the Comparison of Open Source Commons Institutions, in Governing Knowledge Commons (Brett Frischmann, Michael Madison & Katherine Strandburg, eds. 2014): read pp. 1-18

F 4/18 (2-3:15pm) Relationships Between Public and Private Sector Innovation

• Michel Goldman et al, Public-Private Partnerships as Driving Forces in the Quest for Innovative Medicines, 2 Clinical and Translational Medicine (2013): read pp. 1-3
VII. Other Mechanisms for Incentivizing Innovation

T 4/22 Prizes and Contests
• Michael J. Burstein & Fiona E. Murray, Governing Innovation Prizes (Working Paper, to be presented at NYU Innovation Policy Colloquium, Thursday, May 1, 4pm, Rm. VH 202): read entire article

Th 4/24 Government Funding, Procurement, Tax Breaks

VIII. The Challenges of Empirical Studies of Innovation and Intellectual Property

4/29 Introduction to Methodologies and Overview of Empirical Studies
• Wesley Cohen et al., R&D Spillovers, Patents and the Incentives to Innovate in Japan and the United States, Research Policy 31 (2002), 1349-1351, 1352-1366

Th 5/1 Empirical Studies of the Causal Effects of IP on Innovation
T 5/6  Conclusion

A. Short Presentations of Various Empirical Studies

PLEASE NOTE: no reading required; suggested reading if you are interested:


B. Summary & Review