

Intellectual property protection

1

What is a property right?

- A bundle of control rights

- The right to use
- The right to exclude
- The right to transfer, exchange
- The right to delegate
- The right to compensation
- The right to destroy, waste, or change
- The right to income
- Absence of term
- Immunity from expropriation
- Liability to execution

2

Property rights over what?

- the range of objects over which one can have the relevant control

- consumer *and* producer goods
- land, natural resources
- one's body and labor
- ideas

3

Why have property rights?

- To make effective "use of knowledge in society" (see Hayek)
- To settle/avoid conflicts over use
- To preserve the value of resources (avoiding the tragedy of a commons)
- Foster positive-sum interactions; avoid negative-sum interactions!

4

The logic of a commons

- 10 shepherds x 10 sheep each = 100 sheep.
- Individual herd's value = 10 sheep x \$1 = \$10.
- Total herd's value = 100 sheep x \$1 = \$100.
- Total herd's value = 101 sheep x \$.95 = \$95.95.
- Individual herd's value = 11 sheep x \$.95 = \$10.45.
- Benefits concentrated on the one shepherd; costs dispersed among the group.
- A commons tragedy occurs if and when individually rational use of a common resource culminates in a pattern of collective overuse that exceeds the resource's capacity for self-renewal. What can they do?

5

What about ideas?

- Are property rights in good new ideas and their expression justified?
- Should the government protect/enforce such rights?
- Is it good for the state to provide a (limited term) monopoly over ideas?

6

Some proposed justifications

1. To protect the property rights of discoverers.
2. To encourage innovation by ensuring that the innovator profits from the discoveries; or “to promote the progress of science and useful arts.”

7

To protect property rights?

- Question-begging.
- Property rights settle conflicts over the use of scarce goods/resources.
- Intellectual property rights provide the owner with rights over other people's tangible property.

8

Patent and copyright clause

- Article I, Section 8, Clause 8, of the United States Constitution grants Congress the 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.”
- Perpetual terms?
- Disproportionate punishment?
- Absurd examples?

9

Progress and innovation

Benefits

- Incentive effects: encouraging innovation

Costs

- Tracing problems
- Discouraging use
- Rent-seeking (patent trolls)
- *Discouraging* (or misdirecting) innovation

10

Opportunity costs of IP

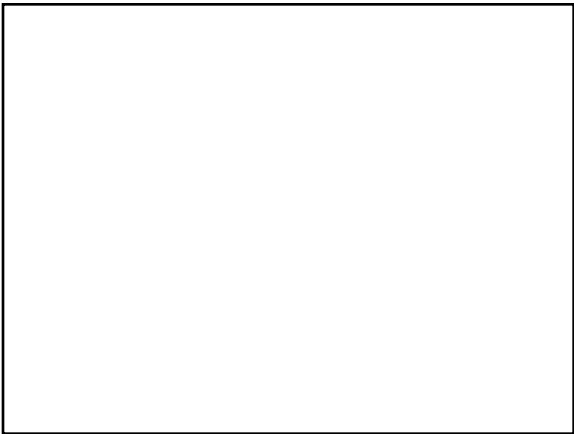
- What would the *pace* of innovation be without IP law (or with weaker protections)?
- What would the *direction* of innovation be without IP law (or with weaker protections)?
- How much does IP law (or its strength in the US) affect corporate power in the US?

11

What are the choices?

- Status quo
- Absolute protection
- More protection
- Less protection
- Elimination (Non-monetary incentives, patronage, private-contract IP)

12



13