

**NATIONAL DEBATE TOPIC FOR HIGH  
SCHOOLS, 2024–2025**

**Resolved: The United States Federal  
Government Should Significantly Strengthen  
Its Protection of Domestic Intellectual  
Property Rights in Copyrights,  
Patents, and/or Trademarks**

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NATIONAL DEBATE TOPIC FOR HIGH SCHOOLS, 2024–2025  
Pursuant to 44 U.S.C. Section 1333

Compiled by the Congressional Research Service  
Library of Congress



U.S. Government Publishing Office  
Washington, DC 2024

44 U.S.C., SECTION 1333

CHAPTER 13—PARTICULAR REPORTS AND DOCUMENTS

Sec. 1333. National high school and college debate topics

(a) The Librarian of Congress shall prepare compilations of pertinent excerpts, bibliographical references, and other appropriate materials relating to:

- (1) the subject selected annually by the National University Extension Association as the national high school debate topic and
- (2) the subject selected annually by the American Speech Association as the national college debate topic.

In preparing the compilations the Librarian shall include materials which in his judgment are representative of, and give equal emphasis to, the opposing points of view on the respective topics.

(b) The compilations on the high school debate topics shall be printed as Senate documents and the compilations on the college debate topics shall be printed as House of Representative documents, the cost of which shall be charged to the congressional allotment for printing and binding. Additional copies may be printed in the quantities and distributed in the manner the Joint Committee on Printing directs.

(P.L. 90-620, Oct. 22, 1968, 82 Stat. 1270)

Historical and Revision Notes

Based on 44 U.S. Code, 1964 ed., Supp. III, Sec. 170 [Sec. 276a] (Dec. 30, 1963, Pub. L. 88-246, Secs. 1, 2, 77 Stat. 802)

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## **Foreword**

The 2024–2025 high school debate topic is: “Resolved: The United States federal government should significantly strengthen its protection of domestic intellectual property rights in copyrights, patents, and/or trademarks.”

In compliance with 44 U.S.C., Section 1333, the Congressional Research Service (CRS) and the Law Library of the Library of Congress prepared this bibliography to assist high school debaters in researching this topic. This bibliography is intended to assist debaters in the identification of references and resources on the subject. In selecting items for inclusion in this bibliography, the Library of Congress has sampled a wide spectrum of opinions reflected in the current literature on this topic. No preference for any policy is indicated by the selection or positioning of articles, books, or websites cited, nor is the Library’s disapproval of any policy, position, or article to be inferred from its omission.

The bibliography was prepared by Audrey Celeste Crane-Hirsch, Calvin Gibson, Christopher Jester, Gary Sidor, and Maya V. Thomas of the Knowledge Services Group, CRS, and by Stephen Mayeaux, of the Law Library of Congress, under the direction of project team leader Devon Galena, with assistance from Christina Shifton.

We wish the best to each debater as they research, prepare, and present arguments on this year’s topic.

Robert R. Newlen, Interim Director  
Congressional Research Service



NATIONAL DEBATE TOPIC FOR HIGH SCHOOLS, 2024–2025

RESOLVED: THE UNITED STATES FEDERAL GOVERNMENT  
SHOULD SIGNIFICANTLY STRENGTHEN ITS PROTECTION  
OF DOMESTIC INTELLECTUAL PROPERTY RIGHTS IN  
COPYRIGHTS, PATENTS, AND/OR TRADEMARKS

AN ANNOTATED BIBLIOGRAPHY ON THE 2024–2025  
HIGH SCHOOL DEBATE TOPIC

Compiled by  
Audrey Celeste Crane-Hirsch, Calvin Gibson, Christopher Jester,  
Gary Sidor, and Maya V. Thomas,  
Knowledge Services Group,  
Congressional Research Service  
and by  
Stephen Mayeaux  
Law Library of Congress

Under the direction of Devon Galena,  
Knowledge Services Group,  
Congressional Research Service

August 2024



## **Introduction**

The 2024–2025 high school debate topic is: “Resolved: The United States federal government should significantly strengthen its protection of domestic intellectual property rights in copyrights, patents, and/or trademarks.” The topic is selected annually by ballot of the delegates from the National Catholic Forensic League, the National Debate Coaches Association, and the National Speech and Debate Association, all organized under the umbrella organization, the national Federation of State High School Associations.

This selective bibliography, with brief annotations, is intended to assist debaters in identifying resources and references on the national debate topic. It lists citations to journal articles, books, congressional publications, legal cases, and websites. The bibliography is divided into six broad sections: Intellectual Property Rights, Economic Effects, Technology and Innovation, Societal Implications, Specific Industry Effects, and Approaches to Reform.

## **Summary**

The purpose of the bibliography is to provide students with a brief overview of information related to the 2024–2025 high school debate topic.

This compilation is not intended to provide complete coverage of the topic. Further research on the topic may be accomplished at high school, public, and research libraries.

In addition to the resources included in this bibliography, there are many more international organizations, U.S. government agencies, and non-governmental organizations that provide information on the debate topic and sub-topics on their websites. Debaters are encouraged to consult library resources as well as the internet for their research.

## Intellectual Property Rights (Overview)

### Articles

McGill, Meredith L. “Copyright and Intellectual Property: The State of Discipline.” *Book History*, no. 16 (2013): 387–427.  
Available at <https://www.jstor.org/stable/42705793>.

This journal article examines the history of intellectual property dating back to the early 18<sup>th</sup> century and how the relationship between intellectual property and book publishing has changed over time.

Murphy, Amanda, Michael Stramiello, Stacy Lewis, and Tom Irving. “Introduction to Intellectual Property: A U.S. Perspective.” *Cold Spring Harbor Perspectives in Medicine* 5, no. 8 (2015): 1–13.

Available at <https://perspectivesinmedicine.cshlp.org/content/5/8/a020776.full.pdf>.

A journal article on the requirements necessary to apply for a patent, as well as an in-depth analysis on the differences between a patent and a trade secret and the legal context of each.

Schnapp, Daniel A., and Aleksandra Sitnick. “Hot Topics in Copyright, Trademark and Trade Dress: Notable Intellectual Property Cases in U.S. Courts.” *Intellectual Property & Technology Law Journal*, no. 8 (2023): 3–13.

Available at <https://www.proquest.com/docview/2862694889?sourcetype=Scholarly%20Journals>.

This article discusses pending and decided U.S. Supreme Court cases concerning intellectual property.

### Books

Beebe, Barton Carl. *Trademark Law: An Open Source Casebook*. 2023.

Available at <https://www.tmcasbook.org/wp-content/uploads/2023/07/BeebeTMLaw-v10-digital-edition.pdf>.

This casebook provides an in-depth look at United States trademark law, including its history and statutory developments, rights, infringement examples, and the registration process.

Boyle, James, and Jennifer Jenkins. *Intellectual Property: Law & the Information Society—Cases and Materials*. Center for the Study of the Public Domain, 2021.

Available at <https://web.law.duke.edu/sites/default/files/centers/cspd/ipcasebook-2021-5th-ed.pdf>.

This textbook briefly compares the three primary forms of federal intellectual property—trademarks, copyrights, and patents—on various aspects, including constitutional basis, subject matter, and overall duration. It also highlights instances of various points of contention within each form of IP and supplements them with litigation.

Fromer, Jeanne C., and Christopher Jon Sprigman. *Copyright Law—Cases and Materials*. 2023.

Available at <http://www.copyrightbook.org/>.

A casebook that examines different specialties of copyright law and U.S. court cases concerning copyright protection, authorship and ownership, copyright formalities, and fair use.

Gibbons, Llewellyn Joseph. “Intellectual Property Law.” In *Overview of U.S. Law*, edited by J.R. Swanegan, 261–306. Durham, NC: Carolina Academic Press, 2019.

This book chapter delves into the four independent areas of intellectual property law: copyrights, patents, trademarks, and trade secrets, and discusses several possible angles pertaining to each, including obtaining, relinquishing, defending, and establishing them.

Sinnreich, Aram. *The Essential Guide to Intellectual Property*. New Haven: Yale University Press, 2019.

This book discusses intellectual property’s influence on various disciplines and areas, including politics, medicine, and industry.

Stim, Richard. *Patent, Copyright & Trademark: An Intellectual Property Desk Reference*. Nolo, 2024.

A primer on intellectual property in a strictly United States context. This textbook provides analysis on the four types of intellectual property and the frequently asked questions, definitions, and sample forms concerning them.

## Reports

American Association of University Professors. *Intangible Assets and Intellectual Property*.

Available at <https://www.aaup.org/sites/default/files/files/IntangibleAssets.pdf>.

A fact sheet that defines common terms and acronyms associated with intellectual property.

United States Patent and Trademark Office. *Expanding the innovation ecosystem: Demystifying the patent system*.

Available at <https://www.uspto.gov/sites/default/files/documents/Introduction%20to%20Intellectual%20Property.pdf>.

This presentation provides an easy-to-follow guide for the patent process from start to finish, providing information on presenting an idea for, applying for, and obtaining a patent.

U.S. Library of Congress. Congressional Research Service. *Copyright Law: An Introduction and Issues for Congress*, by Kevin J. Hickey. IF12339, March 7, 2023.

Available at <https://crsreports.congress.gov/product/pdf/IF/IF12339>.

A report that outlines various aspects of copyright law, including types of copyrightable works, rights of copyright owners, current copyright laws, and copyright enforcement.

U.S. Library of Congress. Congressional Research Service. *Intellectual Property Law: A Brief Introduction*, by Kevin J. Hickey. IF10986, April 13, 2022.

Available at <https://crsreports.congress.gov/product/pdf/IF/IF10986>.

A brief report outlining four types of intellectual property and their various facets, including the process of obtainment, the pertinent federal laws surrounding them, and possible avenues of litigation in the instance of infringement or violation.

U.S. Library of Congress. Congressional Research Service. *Intellectual Property Rights Violations: Federal Civil Remedies and Criminal Penalties Related to Copyrights, Trademarks, Patents, and Trade Secrets*, by Brian T. Yeh. RL34109, May 27, 2016.

Available at <https://crsreports.congress.gov/product/pdf/RL/RL34109>.

This report provides a summary of civil and criminal ramifications for violating federal intellectual property laws.

U.S. Library of Congress. Congressional Research Service. *An Introduction to Trade Secrets Law in the United States*, by Christopher T. Zirpoli. IF12315, January 27, 2023.

Available at <https://crsreports.congress.gov/product/pdf/IF/IF12315>.

This guide defines trade secrets, highlights how they are protected under federal law, and provides recently introduced Congressional legislation on the topic.

U.S. Library of Congress. Congressional Research Service. *An Introduction to Trademark Law in the United States*, by Christopher T. Zirpoli. IF12456, July 24, 2023.

Available at <https://crsreports.congress.gov/product/pdf/IF/IF12456>.

This report provides an overview of the aspects of trademarks and trademark law, including the requirements for trademark creation and registration as well as examples of and remedies for several violations of the Lanham Act, the United States' primary trademark law.

U.S. Library of Congress. Congressional Research Service. *Patent Law: A Handbook for Congress*, by Kevin J. Hickey. R46525, September 16, 2020.

Available at <https://crsreports.congress.gov/product/pdf/R/R46525/3>.

This report addresses the rights granted by, federal litigation surrounding, and the possible revoking of patents.

U.S. Library of Congress. U.S. Copyright Office. *Copyright Basics*. September 2021.

Available at <https://www.copyright.gov/circs/circ01.pdf>.

This fact sheet covers the basics of copyright law, including works eligible for copyright protection, the rights of copyright owners, and for how long copyright on a particular work can last.

World Intellectual Property Organization. *What Is Intellectual Property?*. 2020.

Available at [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_450\\_2020.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_450_2020.pdf).

This guide provides a global perspective on intellectual property, highlighting the main types and how they are protected, including international protections.

## Websites

Georgetown University Law School. “Intellectual Property Law.”

Available at <https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-areas/intellectual-property-law/>.

This webpage summarizes the four primary types of intellectual property as well as highlights the duties of intellectual property lawyers.

Government of Canada. “Canadian Intellectual Property Office.”

Available at <https://ised-isde.canada.ca/site/canadian-intellectual-property-office/en>.

This webpage provides resources on Canadian-specific intellectual property, including the various types of intellectual property, how intellectual property differs internationally, and blogs and statistics.

Government of the United Kingdom. “Intellectual Property Office.”

Available at <https://www.gov.uk/government/organisations/intellectual-property-office>.

The United Kingdom’s website on intellectual property. This page examines the kinds of intellectual property and the laws surrounding them from a UK perspective.

World Intellectual Property Organization. “Frequently Asked Questions: Patents.”

Available at [https://www.wipo.int/patents/en/faq\\_patents.html](https://www.wipo.int/patents/en/faq_patents.html).

The World Intellectual Property Organization’s page on patents and patent law outlines common questions, including those related to the basics of patents, applying for patent protection, and the required patent information.

## Economic Effects

### Articles

Chen, Hong. “The Impact of Intellectual Property Protection on the Development of Digital Economy and Regional Entrepreneurial Activity: Evidence from Small and Medium Enterprises,” *Frontiers in Psychology*, vol. 13 (2022).

Available at <https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2022.951696/full>.

This article uses quantitative analysis to measure intellectual property management effects on open innovation, competitive advantage, and entrepreneurial performance. The focus of the analysis was small and medium enterprises in the People’s Republic of China.

MacDonald, Luke and Daniel Tucker. “Startups and IP Protections: Fuel Growth and Protect Your Future,” *Reuters*, (March 20, 2023).

Available at <https://www.reuters.com/legal/legalindustry/startups-ip-protections-fuel-growth-protect-your-future-2023-03-20/>.

Written in the style of an advice piece to small business and entrepreneurs, the authors warn about the economic effects of not exploring IP protections for innovative and creative works. The article encourages small businesses to avoid IP pitfalls and control creative growth to enhance the probability of success.

Oberbrunner, Kary. “The Costs of IP Theft and How to Protect Your Company’s Ideas.” *Forbes*, (September 25, 2023).

Available at <https://www.forbes.com/sites/forbesbusinesscouncil/2023/09/25/the-costs-of-ip-theft-and-how-to-protect-your-companys-ideas/?sh=f255dde43f88>.

The article discusses the cost of intellectual property theft on the U.S. economy, as well as potential negative impacts on innovation and small businesses.

Possessky, Laura. “Cultivating the Economic Benefits of Creativity: Finding the Right Balance in IP Laws.” *Landslide*, American Bar Association, vol. 12, no. 4 (2020).

Available at [https://www.americanbar.org/groups/intellectual\\_property\\_law/publications/landslide/2019-20/march-april/cultivating-economic-benefits-creativity-finding-right-balance-ip-laws/](https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2019-20/march-april/cultivating-economic-benefits-creativity-finding-right-balance-ip-laws/).

This article discusses the critical equilibrium of encouraging creativity and innovation, and allowing access—with U.S. competitiveness in the global economy at stake.

Santacreu, Ana Maria and Mackenzie Peake. “Why Intellectual Property Rights Protection Matters for Economic Growth,” *On the Economy Blog*, The Federal Reserve Bank of St. Louis, (September 12, 2019).

Available at <https://www.stlouisfed.org/on-the-economy/2019/september/intellectual-property-rights-protection-economic-growth>.

This article discusses the importance of protecting and enforcing intellectual property rights.

## Reports

Cuntz, Alexander, Carsten Fink, and Hansueli Stamm. *Artificial Intelligence and Intellectual Property: An Economic Perspective*. World Intellectual Property Organization, Economic Research Working Paper No. 77, 2024.

Available at <https://www.wipo.int/publications/en/details.jsp?id=4715&plang=EN>.

This report focuses on the economic dimension of artificial intelligence (AI) on intellectual property frameworks. The evolving landscape of AI innovation incentives are explored with respect to economic development.

Ezell, Stephen. *Losing the Lead: Why the United States Must Reassert Itself as a Global Champion for Robust IP Rights*. Information Technology and Innovation Foundation, June 12, 2023.

Available at <https://itif.org/publications/2023/06/12/losing-the-lead-why-united-states-must-reassert-itself-as-global-champion-for-robust-ip-rights/>.

This report endorses strong intellectual property protections for a variety of economic reasons, including more robust entrepreneurship and intellectual investment, stimulation of the economy, and enhanced bargaining power in international economic trade negotiations.

George, Ivin. *An Economic Perspective to Intellectual Property*. SSRN, September 18, 2019.

Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3454409](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3454409).

This paper, published in the open-access format of SSRN, focuses on intellectual property management and its impacts on the economy from micro and macro perspectives.

Toole, Andrew A., Richard D. Miller, and Nicholas Rada. *Intellectual Property and the U.S. Economy: Third Edition*. U.S. Patent and Trademark Office. 2021.

Available at <https://www.uspto.gov/ip-policy/economic-research/intellectual-property-and-us-economy>.

This report examines how patents, trademarks, and copyrights contribute to the U.S. economy. It contains graphs, tables, and maps to illustrate the impact of intellectual property-intensive industries on the U.S. economy. Data is arranged by state and by a range of sectors in the economy.

United Kingdom Foreign, Commonwealth & Development Office, Intellectual Property Office, and the British Embassy Beijing. *UK-China Cooperation on Intellectual Property*. Government of the United Kingdom. November 13, 2023.

Available at <https://www.gov.uk/government/case-studies/uk-china-cooperation-on-intellectual-property>.

This case study summarizes intellectual property cooperation between the United Kingdom and China, including links to ancillary issues and related fact sheets.

United Nations, Conference on Trade and Development. *Harnessing Intellectual Property Rights for Innovation, Development and Economic Transformation in Least Developed Countries* (Advance copy). January 2024.

Available at <https://unctad.org/publication/harnessing-intellectual-property-rights-innovation-development-and-economic>.

This report, co-published with the Commonwealth Secretariat, explores the importance of protecting intellectual property rights to economic advancement of the least developed countries. The authors prioritize innovation, technology transfers, and intellectual stimulation as catalysts for such advancement, and outline how these catalysts must be encouraged and protected.

U.S. Chamber of Commerce. *U.S. Leads World in Protecting Work of Entrepreneurs and Artists, But New Policies pose Risks, U.S. Chamber Research Shows*. February 22, 2024.

Available at <https://www.uschamber.com/intellectual-property/u-s-leads-world-in-protecting-work-of-entrepreneurs-and-artists-but-new-policies-pose-risks-u-s-chamber-research-shows>.

This press release touts new data and comparative analysis of international intellectual property protections. The full report is available as a free download through the press release link, but users must fill out a form requiring contact information for email delivery.

U.S. Congress, Congressional Budget Office. *Federal Policies in Response to Declining Entrepreneurship*. December 29, 2020.

Available at <https://www.cbo.gov/publication/56906>.

This report assesses reasons for declining entrepreneurship, including insufficient intellectual property protections, and proposes policies for reversing the trends.

U.S. Library of Congress. Congressional Research Service. *Intellectual Property Rights (IPR) and International Trade*, by Shayerah I. Akhtar and Liana Wong. IF10033, September 15, 2023.

Available at <https://crsreports.congress.gov/product/pdf/IF/IF10033>.

This report provides an overview of the protection of international intellectual property rights. It references the U.S. Congress' constitutional responsibility to legislate and oversee intellectual property rights matters in U.S. trade policy, and lists specific issues and policies options available for Congress to consider.

World Intellectual Property Organization. *World Intellectual Property Indicators 2023*. 2023.

Available at <https://www.wipo.int/publications/en/details.jsp?id=4678>.

This report examines IP activity around the world. It covers patents, utility models, trademarks, industrial designs, and geographical indications. It provides a picture of activity in the creative economy. The gateway link to the report also provides access to downloadable spreadsheet data tables and to fourteen historical reports in the series.

## Websites

Organisation for Economic Co-operation and Development (OECD), Directorate for Science, Technology, and Innovation. "Intellectual Property Statistics."

Available at <https://www.oecd.org/en/data/datasets/intellectual-property-statistics.html>.

This resource is a gateway for statistical analyses, prior international conference material and publications, and links to respective intellectual property agencies of selected foreign countries.

U.S. Patent and Trademark Office, "IP Treaties."

Available at <https://www.uspto.gov/ip-policy/international-ip-treaties>.

This resource is a portal to many correlative and causative effects of managing intellectual property policy, including trade and economics, enforcement, and management of IP treaties.

World Intellectual Property Organization (WIPO), "About the WIPO Statistics Data Center."

Available at <https://www.wipo.int/ipstats/en/help.html>.

This page on the WIPO website leads users to data on intellectual property practices and measurable outcomes of policy implementation for several countries around the world.

World Intellectual Property Organization (WIPO), “IP Advantage.”

Available at <https://www.wipo.int/web/ip-advantage/>.

This page on the WIPO website presents case studies of how intellectual property works and has material on a variety of countries and regions. It also covers different sectors of life, including health, agriculture, and commercial products.

World Trade Organization, “TRIPS—Trade-Related Aspects of Intellectual Property Rights.”

Available at [https://www.wto.org/english/tratop\\_e/trips\\_e/trips\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/trips_e.htm).

This resource is a gateway for background and summary information on trade issues associated with the protection of intellectual property rights, international agreements, and ancillary issue impact material.

U.S. Executive Office of the President, Office of the United States Trade Representative (USTR), “Special 301.”

Available at <https://ustr.gov/issue-areas/intellectual-property/special-301>

This is the gateway page to the congressionally-mandated annual report published by the USTR. The “Special 301” Report reviews global intellectual property rights protections and enforcement, and impact analysis on global markets. Links are available to material supporting the most recent published reports, including respective full report text, summaries, press releases, and hearing testimony statements and transcripts.

## Technology and Innovation

### Articles

Appel, Gil, Juliana Neelbauer, and David A. Schweidel. “Generative AI Has an Intellectual Property Problem.” *Harvard Business Review*, (April 7, 2023).

Available at <https://hbr.org/2023/04/generative-ai-has-an-intellectual-property-problem>.

The authors provide insight into navigating the evolving landscape of generative AI in content creation and innovation amidst legal uncertainties. Emphasizing the need for proactive measures, they highlight the importance for businesses to understand and mitigate legal risks, including potential infringement liabilities and contractual obligations pertinent to technology development.

Corbett, Dustin J. “A Premier Paradigm Shift: The Impact of Artificial Intelligence on U.S. Intellectual Property Laws,” *Liberty University Law Review*, 17, no. 2 (2023): 321–384.

Available at [https://digitalcommons.liberty.edu/cgi/viewcontent.cgi?article=1335&context=lu\\_law\\_review](https://digitalcommons.liberty.edu/cgi/viewcontent.cgi?article=1335&context=lu_law_review).

This article delves into the transformative influence of AI on intellectual property (IP) laws in the United States. It examines how AI technologies are challenging traditional ideas of IP ownership, enforcement, and infringement. It explores the evolving legal landscape surrounding AI-generated works, particularly with respect to patents and copyrights.

Holloway, Jim, Milton Cheng, and Julia S. Dickenson. "Emerging Technologies: Will copyright law enable or inhibit generative AI?," *World Economic Forum-On the Agenda/Emerging Technologies*, (January 13, 2024).

Available at <https://www.weforum.org/agenda/2024/01/cracking-the-code-generative-ai-and-intellectual-property/>.

The World Economic Forum explores how copyright regulations may either facilitate or impede the development and deployment of generative AI technologies, considering issues such as ownership, infringement, and fair use. It also explores potential policy directions and legal reforms needed to help ensure that copyright law evolves to support innovation in the field of generative AI.

Gmeiner, Michael and Robert Gmiener. "Encouraging Domestic Innovation by Protecting Foreign Intellectual Property," *International Review of Law and Economics*, no. 67 (2021): 1–20.

Available at <https://sunwater.org/wp-content/uploads/2021/06/1-s2.0-S0144818821000247-main.pdf>. This article explores the idea of encouraging domestic innovation by safeguarding foreign IP. It discusses how heightened protection of foreign IP can stimulate innovation within domestic industries, fostering a climate conducive to creativity and development. It highlights the reciprocal benefits of respecting international IP rights and the importance of balancing IP protection.

Gruner, Richard S. "The Power of Distant Rewards: Driving International Innovation Through United States Patent Incentives," *Fordham Intellectual Property, Media and Entertainment Law Journal*, 29, no. 3 (2019): 861–929.

Available at <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1722&context=iplj>.

This article explores how United States patent incentives serve as a driver for international innovation. It analyzes the effectiveness of these incentives in encouraging global inventors to seek patent protection in the U.S., thereby fostering cross-border innovation exchange.

Reid, Amanda. "Copyright Policy as Catalyst and Barrier to Innovation and Free Expression." *Catholic University Law Review*, 16, no. 1 (2019): 33–86.

Available at <https://scholarship.law.edu/cgi/viewcontent.cgi?article=3485&context=lawreview>.

Reid discusses how copyright policies impact innovation and free expression in many areas including technology. By examining copyright law's interaction with technological advancements, the author highlights its dual role as both a catalyst and a barrier, and explores the balance between protecting rights and fostering innovation and expression in the digital era.

Sag, Matthew. "Copyright Law's Impact on Machine Intelligence in the United States and The European Union," *FIU Law Review*, 14, no. 10 (2020): 293–298.

Available at <https://ecollections.law.fiu.edu/cgi/viewcontent.cgi?article=1432&context=lawreview>.

Sag focuses on the relationship between copyright law and machine intelligence in both the United States and the European Union. The article highlights how copyright regulations affect the development, deployment, and use of machine intelligence technologies in these jurisdictions. It analyzes legal frameworks, case studies, and potential implications for innovation and legal compliance in the context of machine intelligence.

Silvernail, Jesse L. “Calibrating Intellectual Property and Innovation in NewSpace,” *Texas A&M Journal of Property Law*, 6, no. 2 (2020): 113–137.

Available at <https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1112&context=journal-of-property-law>.

NewSpace consists of private aerospace firms leading commercial space exploration, which has traditionally been government-led. This article examines the challenges and opportunities for IP protection in this rapidly evolving industry, characterized by technological advancements.

Skibsted, Jens Martin. “How IP laws can be reimagined to stimulate innovation,” *World Economic Forum—On the Agenda/Emerging Technologies*, (February 19, 2024).

Available at <https://www.weforum.org/agenda/2024/02/how-ip-laws-can-be-reimagined-to-stimulate-innovation/>.

While delving into the evolving role of IP laws in an increasingly digital world, the World Economic Forum discusses strategies for revitalizing IP laws to foster innovation. It proposes policy recommendations and legal reforms aimed at optimizing IP laws to incentivize creativity and entrepreneurship. Additionally, it highlights examples of successful IP initiatives driving innovation in various industries.

Sumaita, Imma. “The Importance of Being Earnestly Innovative: The Increasing Role of Intellectual Property Law in the Global Economy,” *The University of Cincinnati Intellectual Property and Computer Law Journal*, 6, no. 1 (2021): 1–34.

Available at <https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1039&context=ipclj>.

This article focuses on the intersection of trade policy and intellectual property laws, exploring how IP protections encourage creativity and investment in various industries. Additionally, it discusses the challenges posed by technological advancements and the role IP laws incentivize innovation and maintain competitiveness in the global marketplace.

## Books

Hilko, Margery. *Disrupting Copyright: How Disruptive Innovations and Social Norms are Challenging IP Law*. New York: Routledge, 2021.

This book explores how disruptive innovations impact copyright law, reshaping market norms with new technologies. By examining past interactions between disruptive innovations and the law, it offers guidance for legislators. It proposes a framework for adapting copyright law to accommodate these innovations. Additionally, it theorizes how lawmakers should address disruptive innovations in the future.

Farley, Robert M. and Davida H. Isaacs. *Patents for Power Intellectual Property Law and the Diffusion of Military Technology*. Chicago: The University of Chicago Press, 2020.

In their book, Farley and Isaacs analyze the interaction between intellectual property law and military innovation, exploring how patent systems impact the dissemination of military technology and shape global security landscapes. By exploring historical case studies and a range of inventions, Farley and Isaacs shed light on the role of patents in advancing military capabilities impacting relations across a number of countries.

## Reports

Hetu, Martin, Denisa Mindruta, and Will Mitchell. *Intellectual Property Rights and New Technology Development: How the Replacement Effect and Capabilities Influence Firm Investment Following a Reduction In IPR*. Mack Institute for Innovation Management. 2021.

Available at [https://mackinstitute.wharton.upenn.edu/wp-content/uploads/2022/03/Hetu-Martin-Mindruta-Denisa-and-Mitchell-Will\\_Intellectual-Property-Rights-and-New-Technology-Development.pdf](https://mackinstitute.wharton.upenn.edu/wp-content/uploads/2022/03/Hetu-Martin-Mindruta-Denisa-and-Mitchell-Will_Intellectual-Property-Rights-and-New-Technology-Development.pdf).

The authors investigate the relationship between intellectual property rights (IPR) and firm investment in new technology development. It specifically examines how changes in IPR regulations impact firm investment behaviors, considering factors such as the replacement effect and firm capabilities.

Shivakumar, Sujai. *Securing Intellectual Property for Innovation and National Security*. 2022.

Available at <https://www.csis.org/analysis/securing-intellectual-property-innovation-and-national-security>.

The author looks at the intersection of IP, innovation, and national security. They discuss the importance of safeguarding IP in technology development to stimulate innovation while addressing the risks of IP theft to national security. The author also proposes strategies to balance the protection of IP rights with maintaining technological competitiveness and safeguarding national security.

United Nations, Commonwealth Secretariat. *Harnessing intellectual property rights for innovation, development and economic transformation in Least Developed Countries*, 2024.

Available at [https://unctad.org/system/files/official-document/comsec2024d1\\_en.pdf](https://unctad.org/system/files/official-document/comsec2024d1_en.pdf).

This United Nations report examines the role of intellectual property rights in fostering innovation, economic growth, and development within the least developed countries. They discuss strategies for leveraging IPR to stimulate innovation, enhance competitiveness, and drive sustainable economic transformation in these nations.

United Nations, Commonwealth Secretariat. *Revisiting development innovations in least developed countries*, 2023.

Available at [https://unctad.org/system/files/official-document/aldc2023d3\\_en.pdf](https://unctad.org/system/files/official-document/aldc2023d3_en.pdf).

This report assesses the potential for least developed countries to innovate through conventional intellectual property rights policies and investigates the emerging patterns of innovation within the informal sector. It examines the role of government policies and international cooperation in fostering innovation ecosystems within least developed countries.

U.S. Library of Congress. Congressional Research Service. *Patents and Innovation Policy*, by Emily G. Blevins. R47267, June 25, 2022.

Available at <https://crsreports.congress.gov/product/pdf/R/R47267/2>.

Examining the relationship between patents and innovation policy, this report takes a look at how patents impact innovation, economic growth, and technological progress. This report offers insights into the effectiveness of patent systems and potential policy reforms to optimize innovation outcomes.

World Intellectual Property Organization. *WIPO Technology Trends 2019: Artificial Intelligence*. 2019.

Available at [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_1055.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1055.pdf).

This report explores the landscape of artificial intelligence innovation from an intellectual property perspective. It provides an overview of key trends, developments, and challenges in AI technology, focusing on how intellectual property rights are shaping the field. The report includes analysis of patent filings, emerging AI technologies, and policy considerations related to intellectual property protection in the AI domain.

### Websites

Mayo Clinic Platform. “Responsible AI Requires a Delicate Balancing Act,” 2024.

Available at <https://www.mayoclinicplatform.org/2024/04/17/responsible-ai-requires-a-delicate-balancing-act/>.

The Mayo Clinic Platform addresses the complex considerations involved in deploying artificial intelligence responsibly. They discuss the need to balance innovation and ethical concerns, particularly in healthcare contexts, and explores how too many restrictions on technology can slow down innovation. While they emphasize the importance of conscientious decision-making and ongoing evaluation in harnessing AI's potential, they advocate for a balance between technological advancements and regulations.

## Societal Implications

### Consumer Rights: Access to Resources and Information and Protections to Free Speech

#### Articles

Babyar, Julie. “Trade, Intellectual Property, and the Public Health Bearing.” *Health Systems*, 12, no. 1 (2023): 123–132.

Available at

[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10013560/pdf/THSS\\_12\\_2062460.pdf](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10013560/pdf/THSS_12_2062460.pdf).

The article identifies numerous deficiencies in the research conducted on the public-health effects of expanded international intellectual-property protections. The article recommends conducting such research as a priority, with standardized terminology and metrics both for health outcomes and for IP categorization across such domains as pre-patent access to innovations; patent exclusions for diagnosis, surgery, or therapy; post-grant review procedures; and licensing and enforcement of IP rights.

Boyte, Alina Ng. “The Social Value of Intellectual Property.” *IP Theory*, 12, no. 3 (2023): 1–37.

Available at <https://www.repository.law.indiana.edu/ipt/vol12/iss3/1/>.

Boyte wants to encourage intellectual property owners to use their intellectual property rights to create positive social impact, arguing that corporate owners of intellectual property should care about the impact their decisions have on society and the planet. The article goes on to discuss how the legal system can create conditions to make it economically efficient for businesses to act in ways that improve social welfare and protect the environment.

Burk, Dan L. “Patents and State Constitutionally Protected Speech.” *Duke Journal of Constitutional Law & Public Policy*, 15, no. 1(2020): 1–24.

Available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1160&context=djclpp>.

The author explains that although patents are federally-prescribed, state law governs the ownership and transfer of patents, and states may freely regulate the use of patented technology. Similarly important, the author argues, are many state constitutions' so-called “affirmative” free-speech guarantees. The author contends that such state free-speech rights may be used to compel broader access to at least some telecommunications and information-processing technology, through mechanisms such as compulsory licensing.

Farley, Christine Haight and Lisa P. Ramsey. “Raising the Threshold for Trademark Infringement to Protect Free Expression.” *American University Law Review*, 72, (April 3, 2023): 103–166.

Available at [https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=3220&context=facsch\\_lawrev](https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=3220&context=facsch_lawrev).

The article contends that in its 2023 *Jack Daniels* trademark decision, the Supreme Court erred by holding that there is less First Amendment protection when an allegedly infringing product uses an existing trademark to designate its source, even when doing so is precisely the point of a parody (as in the case of the “Bad Spaniels” dog chew-toy at issue, made to look like a “Jack Daniels” whiskey bottle). The authors propose a much wider “fair use” trademark defense that they contend would, among other things, provide a consistent First Amendment test that would protect spoofs, sendups, and parodies.

Kraetzig, Viktoria. “Copyright as a Rule of Law Challenge.” *Forum Transregionale Studien*, Working Paper. (2023).

Available at [https://www.reconstitution.eu/fileadmin/bilder/re\\_constitution/31-2023\\_reconstitutionn\\_WP\\_Kraetzig\\_final.pdf](https://www.reconstitution.eu/fileadmin/bilder/re_constitution/31-2023_reconstitutionn_WP_Kraetzig_final.pdf).

Kraetzig explains the tensions between copyright and freedom of speech: copyright grants a limited monopoly on a work, but freedom of speech applies with equal force to original and secondhand speech. The article argues that copyright law should be applied to reduce the misuse of copyright to suppress and censor information from reaching the public.

Marks, Mason and I. Glenn Cohen. “Patents on Psychedelics: The Next Legal Battlefield of Drug Development.” *Harvard Law Review Forum*, 135 (February 20, 2022): 212–235.

Available at <https://harvardlawreview.org/forum/no-volume/patents-on-psychedelics-the-next-legal-battlefront-of-drug-development/>.

The authors identify several weaknesses in the U.S. patent system that increase the likelihood that psychedelic drugs may be granted unwarranted patents as treatments for severe mental illnesses. Such patents can be abused to monopolize emerging markets and impede, rather than promote, continued scientific innovation. The authors recommend creating databases of lesser-known references (so-called prior art) to reduce the number of bad patents that are granted, as well as more robust mechanisms to challenge granted patents.

Post, Robert C. and Jennifer E. Rothman. "The First Amendment and the Right(s) of Publicity." *The Yale Law Journal* 130, no. 1 (October 2020): 86–172.

Available at [130PostRothman\\_pp79s8et.pdf](#).

The authors argue that the current morass of caselaw addressing the right of publicity can be clarified by distinguishing among four interests that publicity law protects: rights of performance, commercial value, control, and dignity. They contend that the extent to which the First Amendment prevents enforcement of publicity rights should be considered separately across each of three potential areas of misappropriation: public discourse, commercial speech, and commodities.

Ramsey, Lisa P. "Using Failure to Function Doctrine to Protect Free Speech and Competition in Trademark Law." *Iowa Law Review Online*, 104 (January 15, 2020): 70–104.

Available at <https://ilr.law.uiowa.edu/volume-104-articles-essays/5>.

The author argues that the U.S. Patent and Trademark Office (USPTO) and courts have not adequately enforced the requirement that a proposed trademarked word, phrase, or other device must function as a trademark, i.e., must designate the product's source. The author recommends that Congress amend existing trademark law to reinforce and strengthen "failure to function" doctrine, both in challenges to existing and requested trademarks and as a defense to infringement claims.

Shield, Charli. "Who Controls the World's Food Supply." *Deutsche Welle* (DW) (April 8, 2021).

Available at <https://www.dw.com/en/agriculture-seeds-need-laws-agribusinesses-climate-change-food-security-need-sovereignty-bayer/a-57118595>.

This article asserts that the United States (and other industrialized nations) uses intellectual-property provisions in international trade agreements to pressure countries in the Global South to join the International Union for the Protection of New Varieties of Plants (UPOV). This organization requires commercial seeds to be genetically distinct, uniform, and stable—criteria that can be difficult to satisfy. As a result, the author claims the only option available for farmers in many developing countries is to buy patented and bioengineered seeds from multinational corporate agribusinesses.

Smith, Cathay. "Copyright Silencing." *Cornell Law Review Online*, 106 (2020): 71-86.

Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3697578](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3697578).

This article identifies numerous instances in which copyright has been used to silence criticism and suppress facts, rather than to protect owners' economic interests in their works. The author explains that fair use doctrine is helpful, but inadequate to address the problem, and recommends the expansion of a "copyright misuse" defense to defeat abusive copyright silencing.

Tenni, Brigitte, Hazel V. J. Moir, Belinda Townsend, Burcu Kilic, Anne-Maree Farrell, Tessa Keegel and Deborah Gleeson. “What is the Impact of Intellectual Property Rules on Access to Medicines? A Systematic Review.” *Globalization and Health*, 18, no. 40 (2022).

Available at

[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9013034/pdf/12992\\_2022\\_Article\\_826.pdf](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9013034/pdf/12992_2022_Article_826.pdf).

The authors reviewed ninety-one articles from 1995–2020 on the impact of intellectual property rules on access to medicines following the World Trade Organization agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) that took effect in 1995. They provide background on TRIPS and conclude that most of the articles found that patents following the implementation of TRIPS rules were associated with increased drug costs and delayed availability.

Uddin, Mahatab. “Impact of Intellectual Property Rights over Food Security in Developing and Least Developed Countries.” *Journal of Judicial Administration Training Institute*, 20 (June 1, 2020): 191–203.

Available at <https://ssrn.com/abstract=3966540>.

Uddin contends the benefits of biotech research and plant genetic resources are overwhelmingly concentrated in industrialized countries, crop diversity has plummeted in developing countries, and local seed firms in poor countries have been driven out of business. The author says this has forced local farmers to become reliant on monocultures promoted by large Western agribusinesses. The author cautions that collectively, these results of current IP regimes heighten risks for massive crop losses and food insecurity in the world's most vulnerable countries.

## Reports

Velásquez, Germán. *Intellectual Property and Access to Medicines: An Introduction to Key Issues: Some Basic Terms and Concepts*. South Centre, December 2019.

Available at [TP1\\_Intellectual-Property-and-Access-to-Medicines\\_EN-1.pdf](https://www.southcentre.org/~/media/TP1_Intellectual-Property-and-Access-to-Medicines_EN-1.pdf).

This report summarizes the principal barriers IP treaties impose on developing countries' access to life-saving medicines. It discusses in detail the “flexibilities” available to poor countries under the 1995 Agreement on TRIPS and the extent to which such flexibilities and the 2001 Doha Declaration are—and are not—sufficient to address the largest barriers to access.

## Websites

Hudson, David L. “Trademarks and the First Amendment.” Free Speech Center at Middle Tennessee State University, November 6, 2023.

Available at <https://firstamendment.mtsu.edu/article/trademarks-and-the-first-amendment/>.

This webpage explains that by limiting the use of expressive messages and designs, trademark law is inherently in tension with First Amendment free speech rights. The article observes that the Supreme Court has never addressed in detail the intersection between trademark law and free-speech rights, but summarizes Supreme Court decisions in 2017 and 2019 which invalidated prohibitions against “disparaging,” “immoral,” and “scandalous” trademarks on grounds that they amounted to impermissible viewpoint discrimination, contrary to the First Amendment.

Mullin, Joe. “Congress Shouldn’t Limit the Public’s Right to Fight Bad Patents.” Electronic Frontier Foundation, November 6, 2023.

Available at <https://www.eff.org/deeplinks/2023/11/publics-right-fight-bad-patents-must-be-protected>.

This trade group webpage suggests that the U.S. Patent and Trademark Office has issued hundreds of patents to entities that neither do business nor utilize the ideas. The author argues that it is crucial for software developers, their trade groups, and nonprofits (such as Electronic Frontier Foundation) to be able to challenge the validity of patents they believe should never have been granted through a process known as *inter partes* review before the Patent Trial and Appeal Board (PTAB).

## **Public Feelings About Intellectual Property Rights; Impact on Consumer Behavior and Choices**

### **Articles**

Calboli, Irene. “The Right to Repair: Recent Developments in the USA.” *WIPO Magazine* (August 2023)

Available at [https://www.wipo.int/wipo\\_magazine\\_digital/en/2023/article\\_0023.html](https://www.wipo.int/wipo_magazine_digital/en/2023/article_0023.html). This World Intellectual Property Organization (WIPO) article explains that the Digital Millennium Copyright Act (DMCA) prohibits measures to “circumvent” technological measures embedded into copyrighted works, which manufacturers construe to mean that unauthorized repairs of electronic devices infringe upon their intellectual property. The author summarizes consumers' arguments in support of laws to guarantee “the right to repair,” and manufacturers' responses.

Lai, Jessica C. and Janine L. Williams. “Finding Your Identity and Partner in a Trade Mark? Consumption, Innovation and the Law.” *International Review of Industrial Property and Copyright Law* 53, no. 8 (2022): 1201–1227.

Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9363865/>.

The authors argue that two aspects of trademark protection encourage brand-congruent innovation. Consumers purchase some trademarked goods (e.g., sports-team merchandise) to express identification, not to ensure a quality product. Consumers form long-lasting relationships and identify with other trademarked brands that align with their personalities, values, and self-image. In both cases, brand-congruent innovations enhance brand value.

### **Reports**

Bröcher, Flemming B., Vaida Bröcher, and Joachim S. Werner. *WIPO Pulse Global Intellectual Property Perception Survey*. World Intellectual Property Organization (WIPO), 2023

Available at <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2023-36-en-wipo-pulse.pdf>.

Reports on the results of surveying 25,000 consumers in 50 countries across all regions of the world. Information is provided about respondents' awareness of five kinds of intellectual property; perceptions of their value to the economy; and whether a product that is protected is more trustworthy, better value for money, high-tech technology, and ensures fair income for inventors, designers, authors, and producers.

The Decision Co. *Intellectual Property Awareness & Attitudes* (research report prepared for the U.S. Intellectual Property Alliance (USIPA)), 2022.

Available at <https://static1.squarespace.com/static/5ed4066e709a614ffb39f898/t/634d92189b1e4d7e226418d1/1666028057285/>

[USIPA Survey on Intellectual Property REPORT Q422.pdf](#)

This survey, conducted in January 2022 on behalf of a trade group representing IP holders, found that two-thirds of Americans say they understand intellectual property protections, but few can explain what they mean. Americans generally have positive views towards IP protections, but not strongly. Many Americans have a poor understanding of IP basics, such as mistakenly thinking a patent helps an inventor keep an invention secret.

European Union Intellectual Property Office. *European Citizens and Intellectual Property: Perception, Awareness, and Behavior*, 2020.

Available at [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/Perception\\_study\\_2020/](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Perception_study_2020/Perception_study_full_en.pdf)

[Perception\\_study\\_full\\_en.pdf](#)

This 2020 survey of over 25,000 people in the 27 European Union member states found very high agreement (90%) that intellectual property rights contribute to the quality of products and services. Eight out of ten (80%) of Europeans say they have a “very good” or “rather good” understanding of the meaning of “intellectual property.” This figure was considerably lower among those who admitted intentionally buying counterfeit goods (70%) or using pirated streaming services (73%).

United States Patent and Trademark Office. *Public Views on Artificial Intelligence and Intellectual Property Policy*, October 2020.

Available at [https://www.uspto.gov/sites/default/files/documents/](https://www.uspto.gov/sites/default/files/documents/USPTO_AI-Report_2020-10-07.pdf)

[USPTO\\_AI-Report\\_2020-10-07.pdf](#)

This report summarizes responses to two U.S. Patent and Trademark Office requests for public comments on the intersection of intellectual property rights and AI. As summarized in the report, commentators generally believed that current intellectual property law is well-calibrated to address continuing AI developments.

## Websites

World Intellectual Property Organization (WIPO). “Building Respect for Intellectual Property.”

Available at <https://www.wipo.int/web/respect-for-ip>.

This webpage provides links to WIPO position papers and awareness activities to help ensure intellectual property provides fair benefits for both owners and users of IP. Its “Development Agenda” calls for using IP to facilitate social and economic development and welfare.

## Impact to Ability to Control Personal Information

### Articles

Balganesh, Shyamkrishna. "Of Autonomy, Sacred Rights, and Personal Marks." *Harvard Law Review Forum*, 135 (April 20, 2022): 343–358.

Available at <https://harvardlawreview.org/forum/no-volume/of-autonomy-sacred-rights-and-personal-marks/>.

Responding to the article "Navigating the Identity Thicket: Trademark's Lost Theory of Personality, the Right of Publicity, and Preemption" by Jennifer Rothman summarized later in this section, the author critiques Rothman's proposal for an autonomy- and dignity-based conception of personality-based trademarks as incomplete and thus inadvertently providing strategic cover for longstanding rationales for intellectual-property rights based upon utilitarianism and promoting rights-holders' economic interests.

Chakravorti, Bhaskar. "Why It's So Hard for Users to Control Their Data." *Harvard Business Review* (January 30, 2020).

Available at <https://hbr.org/2020/01/why-companies-make-it-so-hard-for-users-to-control-their-data>.

This article discusses both conceptual and practical difficulties in defining and protecting personal data. The article concludes with a 10-point checklist of items the author considers necessary for any workable system of data governance to resolve, including theoretical matters, market problems, and regulatory issues.

Georgiades, Eugenia. "A Right That Should've Been: Protection of Personal Images on the Internet." *Idea*, 61, no. 2 (2021): 275–327.

Available at [https://law.unh.edu/sites/default/files/media/2021/05/georgiades\\_final.pdf](https://law.unh.edu/sites/default/files/media/2021/05/georgiades_final.pdf).

The author identifies reasons based in personal autonomy and dignity that individuals should have the right to control internet usage of images of themselves from their private lives. Later sections of the article approvingly discuss U.S. law precedents and protections in this arena as a positive model for countries such as Australia that, in the author's view, currently lack adequate protections.

Roesler, Mark and Garrett Hutchinson. "What's in a Name, Likeness, and Image? The Case for the Federal Right of Publicity Law." *Landslide*, 13, no. 1 (September/October 2020).

Available at [https://www.americanbar.org/groups/intellectual\\_property\\_law/publications/landslide/2020-21/september-october/what-s-in-a-name-likeness-image-case-for-federal-right-of-publicity-law/](https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2020-21/september-october/what-s-in-a-name-likeness-image-case-for-federal-right-of-publicity-law/).

About 35 states recognize a "right to publicity," defined as an individual's right to control the commercial and economic use of their name, image, voice, likeness, and signature. Even where a right to publicity is recognized, the contours vary from one state to another. This article argues that the current inconsistent patchwork of state laws should be replaced or made unnecessary by a uniform federal law of publicity.

Rothman, Jennifer E. "Navigating the Identity Thicket: Trademark's Lost Theory of Personality, the Right of Publicity, and Preemption." *Harvard Law Review Forum*, 135, no. 5 (March 2022): 1271–1350.

Available at <https://harvardlawreview.org/print/vol-135/navigating-the-identity-thicket-trademarks-lost-theory-of-personality-the-right-of-publicity-and-preemption/>.

Rothman provides extensive historic evidence that trademark law, like copyright and patent laws, originated in part to protect right-holders' personal interests, not just their economic interests. The piece argues that trademark law should renew its historic recognition of images, names, and other indicia of identity. The article contends that restoring personality-based marks will (among other things) promote individual autonomy and resolve many conflicts between trademark and right-of-publicity laws.

### Reports

U.S. Library of Congress. Congressional Research Service. *Artificial Intelligence Prompts Renewed Consideration of a Federal Right of Publicity*, by Christopher T. Zirpoli. LSB11052.

Available at <https://crsreports.congress.gov/product/pdf/LSB/LSB11052>.

This report observes that the right of publicity, defined generally as the right to prevent unauthorized commercial use of one's name, image or likeness, intersects with, but is not protected by, a standalone federal law, and surveys various state-level legal protections. The report identifies particular concerns raised by recent uses of artificial intelligence and discusses constitutional and other legal considerations for federal legislation.

### Websites

U.S. Patent and Trademark Office. "Name or likeness of a particular living individual in a trademark."

Available at <https://www.uspto.gov/trademarks/laws/inquiry-regarding-nameportraitsignature-particular-living-individual-mark>.

This website explains that the U.S. Patent and Trademark Office generally requires written consent from the relevant individual if a proposed trademark includes the name or likeness of a particular living individual. The website gives detailed examples.

Constitution Annotated. "Intro.9.2.7 Vidal v. Elster: Does Denying Registration of a Trademark Identifying a Living Individual Violate the First Amendment?"

Available at [https://constitution.congress.gov/browse/essay/intro.9-2-7/ALDE\\_00000083/](https://constitution.congress.gov/browse/essay/intro.9-2-7/ALDE_00000083/).

This essay from the *Constitution Annotated* covers *Vidal v. Elster*, decided by the Supreme Court in June 2024. This case focused on the section of the Lanham Act which prohibits registration of a trademark identifying a living individual without that individual's consent and whether that section violates the First Amendment's Free Speech Clause. The Supreme Court decided this section of the Lanham Act does not violate the Free Speech Clause, and the essay provides a summary of the Court's opinion.

## Preservation of Cultural Heritage and Traditional Knowledge

### Articles

Awopetu, Richard. “In Defense of Culture: Protecting Traditional Cultural Expressions in Intellectual Property.” *Emory Law Journal*, 69, no. 4 (2020): 745–779.

Available at

<https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1014&context=elj>.

Awopetu reports that although some U.S. federal trademark law provisions might prevent trademark registration of traditional cultural expressions by nonindigenous entities, deficiencies in the trademark registration system make these provisions mostly ineffective. The article suggests the creation of a large database of traditional cultural expressions that trademark examiners would consult before granting trademark registrations. It further proposes the adoption of a new category of collective and certification trademarks that would make it easier for communities to obtain trademark benefits for their traditional cultural expressions.

Smolinski, Tomasz G. “A Proposal for a Model Indigenous Intellectual Property Protection Tribal Code (MIIPPTC).” *Tribal Law Journal*, 22 (2023): 2–29.

Available at <https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1095&context=tj>.

Smolinski identifies structural reasons that existing U.S. intellectual-property laws are inadequate to protect indigenous knowledge, such as the difficulty of meeting “hard copy fixation” requirements for traditional cultural knowledge that is often transmitted through oral customs and rituals. Drawing upon a survey of tribal laws, the article suggests a “model code” of best practices for protecting indigenous intellectual property.

### Books

Stamatoudi, Irini, ed. “The Notions of Intellectual Property and Cultural Heritage: Overlaps and Clashes.” In *Research Handbook on Intellectual Property and Cultural Heritage*, 8–37. Northampton, MA: Edward Elgar Publishing, 2022.

Available at

<https://www.elgaronline.com/edcollbook/book/9781800376915/9781800376915.xml>.

This chapter surveys the range of intellectual property protections available under national laws and international treaties and conventions, highlighting applications to cultural heritage. The chapter then explores the concept of “cultural property” and the extent to which it overlaps with—and is in tension with—“intellectual” property. The chapter explains that cultural heritage law has been shaped by competing “protective” and “art market” views of cultural heritage.

World Intellectual Property Organization, *Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions*. Geneva: Switzerland: WIPO, 2020.

Available at [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_933\\_2020.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_933_2020.pdf).

This booklet explores the intersection between traditional knowledge, genetic resources, and traditional forms of indigenous creativity and innovation. It discusses pros and cons of three potential approaches to protecting indigenous IP: through better application of current IP law (e.g., by examining traditional knowledge resources when evaluating whether an invention is new); extending existing IP law; or developing new mechanisms specifically to protect indigenous IP.

## Specific Industry Effects

### Health, Biotechnology, and Pharmaceuticals

#### Articles

Atkinson, Jonathan DM, and Rachel Jones. "Intellectual Property and Its Role in the Pharmaceutical Industry." *Future Medicinal Chemistry*, 1, no. 9 (2009): 1547–1550. Available at <https://www.tandfonline.com/doi/full/10.4155/fmc.09.138>.

The authors highlight the importance of intellectual property rights protections to the pharmaceutical industry. They outline the patent protections available to companies in the pharmaceutical industry and conclude that IP rights are essential to sustaining innovation in new medicines due to the lengthy and costly research & development required to develop a new drug.

Giugni, Diego, and Valter Giugni. "Intellectual Property: A Powerful Tool to Develop Biotech Research." *Microbial Biotechnology*, 3, no. 5 (2010): 493–506. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3815763/>.

The authors provide a survey of the intellectual property rights protections available to those in the biotechnology industry, advocating for the consistent application of patents for those involved in biotech research. They argue that strong protections are essential to sustaining the cost of research & development in the biotechnology industry.

Jung, Youn, and Soonman Kwon. "How Does Stronger Protection of Intellectual Property Rights Affect National Pharmaceutical Expenditure? An Analysis of OECD Countries." *International Journal of Health Services*, 48, no. 4 (2018): 685–701. Available at <https://journals.sagepub.com/doi/abs/10.1177/0020731418786095?journalCode=joha>.

The authors analyze the correlation between the strength of IPR protection for the pharmaceutical industry and the amount spent on prescription drugs in the 22 OECD countries. Through regression analysis, they show a significant correlation between stronger IPR protection and higher pharmaceutical expenditure, but only if the United States is excluded from the analysis.

#### Books

Brougher, Joanna. *Intellectual Property and Health Technologies: Balancing Innovation and the Public's Health*. New York: Springer, 2014.

This book provides an introduction to intellectual property rights issues as they pertain to medical technology and the delivery of medicine. The author advocates for a balanced approach to intellectual property rights that encourages innovation while still allowing access to medicine for individuals across the socio-economic spectrum.

Sing, Kshitij Kumar. *Biotechnology and Intellectual Property Rights: Legal and Social Implications*. New Delhi: Springer, 2015.

This book examines the applicability of current IPR protections to the emerging field of biotechnology, concluding that the existing IPR framework doesn't adequately address the new technology. The author argues that a flexible legal and regulatory IPR approach will be required to accommodate innovations in biotechnology, with an emphasis on striking the balance between promoting economic incentive and social good.

## Reports

Barbosu, Sandra. *Not Again: Why the United States Can't Afford to Lose Its Biopharma Industry*. Information Technology & Innovation Foundation, February 29, 2024.

Available at <https://itif.org/publications/2024/02/29/not-again-why-united-states-cant-afford-to-lose-biopharma-industry/>.

The author contends that the United States is in danger of losing its leadership in the biopharmaceutical industry, comparing the current situation to past instances in which this occurred. The author posits that robust intellectual property protections are central to maintaining the U.S.'s biopharmaceutical industry lead, concluding that the United States should consider policies to incentivize longer-term research.

U.S. Library of Congress. Congressional Research Service. *The Role of Patents and Regulatory Exclusivities in Drug Pricing*, by Kevin J. Hickey and Erin H. Ward. R46679. January 30, 2024.

Available at <https://crsreports.congress.gov/product/pdf/R/R46679>.

The authors analyze the impact of patents and regulatory exclusivities on the prices consumers pay for prescription drugs. They explain how the complex interactions between patent law, U.S. Food and Drug Administration regulation, and competition law can impact intellectual property rights in the pharmaceutical industry, concluding that Congress may determine whether the current law effectively balances innovation and competition.

## Computing and Artificial Intelligence

### Articles

Picht, Peter Georg, and Florent Thouvenin. "AI and IP: Theory to Policy and Back Again—Policy and Research Recommendations at the Intersection of Artificial Intelligence and Intellectual Property." *IIC—International Review of Intellectual Property and Competition Law*, 54 (2023): 916–940.

Available at <https://www.zora.uzh.ch/id/eprint/238481/>.

The authors describe their work on the AI/IP Research Project, which was formed in order to explore the future of intellectual property law within the framework of artificial intelligence. They subsequently present a series of policy recommendations for new applications of IP law for AI-developed content, including how to address AI's authorship role in patent and copyright law.

Vescovo, Sofia. "Rise of the Machines: The Future of Intellectual Property Rights in the Age of Artificial Intelligence." *Brooklyn Law Review* 89, no. 1 (2023): 221–259.

Available at <https://brooklynworks.brooklaw.edu/blr/vol89/iss1/5/>.

The author analyzes the potential impact of new AI technology on existing intellectual property rights protections, concluding that current IP law doesn't adequately address these new developments. As a solution, the author proposes creating a subcategory of patents and copyrights, called "Digiwork" rights, to specifically address works generated by AI sources.

## Books

Abbot, Ryan, ed. *Research Handbook on Intellectual Property and Artificial Intelligence*. Northampton, MA: Edward Elgar Publishing, 2022.

This book presents a wide-ranging discussion of emerging legal issues at the intersection of intellectual property law and artificial intelligence. This book is divided into four parts, with chapters covering general IP issues, copyrights, trademarks and designs, and patents and trade secrets.

Hilty, Reto, Jyh-An Lee, and Kung-Chung Liu, eds. *Artificial Intelligence and Intellectual Property*. Oxford: Oxford University Press, 2021.

This collection examines the ways in which new artificial intelligence technologies challenge the current intellectual property legal framework. The book provides background on how different AI technologies impact specific aspects of intellectual property law, with suggestions on how to facilitate meaningful policy choices.

## Reports

U.S. Library of Congress. Congressional Research Service. *Generative Artificial Intelligence and Copyright Law*, by Christopher T. Zirpoli. LSB10922, September 29, 2023.

Available at <https://crsreports.congress.gov/product/pdf/LSB/LSB10922>.

The author examines recent copyright law questions placed before the courts and the U.S. Copyright Office in response to new innovations in artificial intelligence. This report provides cogent analysis of the intellectual property questions currently being raised, and it also addresses potential avenues for future congressional action.

U.S. Patent and Trademark Office. *Public Views on Artificial Intelligence and Intellectual Property Policy*. October 2020.

Available at [https://www.uspto.gov/sites/default/files/documents/USPTO\\_AI-Report\\_2020-10-05.pdf](https://www.uspto.gov/sites/default/files/documents/USPTO_AI-Report_2020-10-05.pdf).

This report summarizes and provides expert responses to public comments received from a wide array of stakeholders replying to an August 27, 2019, public request for comments on patenting AI inventions. The responding entities include trade associations, law firms, academic institutions, and foreign patent offices, among others.

## Energy

### Articles

Alexiou, Constantinos. “Gauging the Impact of the Strength of Patent Systems on Renewable Energy Consumption.” *Renewable Energy* 210 (2023): 431–439.

Available at <https://dspace.lib.cranfield.ac.uk/items/9d18609d-89c4-4b4e-91c4-6405832d2772>.

The author employs a Generalized Method of Moments (GMM) model across 47 countries to examine the potential influence of strong patent protection on renewable energy consumption. The author concludes that stronger IPR may sometimes serve to limit the consumption of renewable energy, arguing for a measured approach to IPR policy.

Tee, Wu-Shun, Lee Chin, and Abdul Samad Abdul-Rahim. “Determinants of Renewable Energy Production: Do Intellectual Property Rights Matter?” *Energies* 14, no. 18 (2021): 5707.

Available at <https://www.mdpi.com/1996-1073/14/18/5707>.

The authors utilize an econometric statistics methodology across 59 countries in order to analyze the effects of intellectual property rights protections on renewable energy production. They conclude that stronger intellectual property protections encourage and promote the development of new renewable energy technologies.

### **Books**

Rimmer, Matthew, ed. *Intellectual Property and Clean Energy: The Paris Agreement and Climate Justice*. Singapore: Springer Nature, 2018.

This book examines the impact of intellectual property protections on the development of renewable energy technologies through the prism of climate change and human rights. The book is divided into thematic parts, with chapters covering issues including international climate law, patent law, trademark law, and privacy and trade secrets.

### **Reports**

Lybecker, Kristina, and Sebastian Lohse. *Innovation and Diffusion of Green Technologies: The Role of Intellectual Property and Other Enabling Factors*. Geneva: World Intellectual Property Organization, June 18, 2015.

Available at [https://www.wipo.int/edocs/pubdocs/en/wipo\\_rep\\_gc\\_2015\\_1.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_rep_gc_2015_1.pdf).

The authors provide a literature review concerning emerging green technologies in the energy sector and the influence of intellectual property rights on development of new technologies. They conclude that strong intellectual property rights serve to encourage new research & development in the energy industry.

### **Literature, Music, and the Arts**

#### **Articles**

Flew, Terry. “Copyright and Creativity: An Ongoing Debate in the Creative Industries.” *International Journal of Cultural and Creative Industries* 2, no. 3 (2015): 4–17.

Available at

[https://eprints.qut.edu.au/86117/21/Flew\\_Copyright%2Band%2BCIs\\_IJCCI.pdf](https://eprints.qut.edu.au/86117/21/Flew_Copyright%2Band%2BCIs_IJCCI.pdf).

The author analyzes the complex interplay between the creative industry and copyright protections, particularly in regards to the emerging digital economy. He concludes that the current intellectual property rights framework favors content distributors over content creators and suggests that any copyright reform efforts should focus on strengthening protections for those creators (e.g., authors, musicians, and artists).

Matulionyte, Rita, Elizabeth Paton, Phillip McIntyre, and David Gleadhill. "The System of Book Creation: Intellectual Property and the Self-Publishing Sector of the Creative Industries." *Creative Industries Journal* 10, no. 3 (2017): 191–210. Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3083281](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3083281). The authors evaluate the current intellectual property legal framework available to self-published and fan-fiction e-book authors. They conclude that the present intellectual property rights legal structures are increasingly unable to address new developments in the publishing industry, suggesting that a reconceptualization of IP rights may be necessary moving forward.

Watson, Allan, and Andrew Leyshon. "Negotiating Platformisation: MusicTech, Intellectual Property Rights and Third Wave Platform Reintermediation in the Music Industry." *Journal of Cultural Economy* 15, no. 3 (2022): 326–343. Available at <https://www.tandfonline.com/doi/full/10.1080/17530350.2022.2028653#abstract>. The authors examine the effects of new technology platforms in the music industry, including peer-to-peer networks and the shift to streaming, on intellectual property protections. They conclude that the music industry has an oligopolistic control over intellectual property rights that can sometimes stifle innovation.

### Books

Brown, Abbe E.L., and Charlotte Waelde (eds.) *Research Handbook on Intellectual Property and Creative Industries*. Cheltenham, UK: Edward Elgar Publishing, 2018. This collection presents a multifaceted exploration of the relationship between intellectual property rights protection and the creative industries. The different authors of the individual chapters advocate for a diverse array of policy approaches, with some arguing for strengthened intellectual property rights and others recommending a more tailored approach to reform.

Viswanathan, Bhamati. *Cultivating Copyright: How Creative Industries Can Harness Intellectual Property to Survive the Digital Age*. New York: Routledge, 2020. The author attempts to provide a roadmap for how both companies and individuals in creative industries can utilize intellectual property rights protection to succeed in the digital media environment. She advocates for a tailored application of copyright laws that balances economic gain for the creator with access to the work for the public.

### Reports

Kappos, David, John Villasenor, and Tiffany Misrahi. *Intellectual Property Rights in the Global Creative Economy*. World Economic Forum, October 2013. Available at [https://www3.weforum.org/docs/GAC/2013/WEF\\_GAC\\_IntellectualPropertyRights\\_GlobalCreativeEconomy\\_Report\\_2013.pdf](https://www3.weforum.org/docs/GAC/2013/WEF_GAC_IntellectualPropertyRights_GlobalCreativeEconomy_Report_2013.pdf). The authors provide an overview of the effects of the recent shift to digital content on several different creative industries, including publishing, audio-visual, and music. They recommend a tailored approach to copyright in the digital age, advocating for regularly updated copyright legal frameworks that balance the interests of both creators and consumers.

## Education and Research

### Articles

Cowell, E. William, and Jeffrey H. Reed. "Intellectual Property and Universities: A Path Forward." *Proceedings of the IEEE* 105, no. 7 (2017): 1195–1198.

The authors outline the expanding role of intellectual property rights in academic research, providing a cyclical model that showcases their ideal path from university-based IP to commercialization. They conclude that intellectual property rights are exceedingly important to facilitating further academic research.

Garon, Jon M. "Ownership of University Intellectual Property." *Cardozo Arts & Entertainment Law Journal* 36, no. 3 (2018): 635–674.

Available at <https://www.cardozoelj.com/wp-content/uploads/2018/10/GARON-ARTICLE.pdf>.

The author examines the effects of intellectual property rights protection on several different stakeholders in the university system, including teachers, researchers, and students. He argues that intellectual property creation is closely aligned with the core purpose of higher education, advocating for clearly written institutional IP policies at educational institutions.

Karytinis, Aristotele, and Andrew Ingham. "A Growing Interest for Intellectual Property in Universities." *Pharmaceutical Patent Analyst* 4, no. 2 (2015): 59–61.

The authors delineate the increasingly significant role of intellectual property rights ownership in the higher education industry. They identify key issues they believe need to be addressed in effectively foregrounding the creation of intellectual property rights, while still adhering to institutions' primary educational goals.

Saunders, Kurt M., and Michael A. Lozano. "More Than an Academic Question: Defining Student Ownership of Intellectual Property Rights." *Fordham Intellectual Property, Media & Entertainment Law Journal* 28, no. 2 (Winter 2018): 175–232.

Available at

<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1689&context=iplj>.

The author analyzes the current state of intellectual property rights in the academic industry, specifically focusing on the ownership rights afforded to students who invent or create new intellectual property. He presents multiple options for policy approaches that preserve students' ownership rights, while concluding that a balanced approach must prioritize their education and learning experience.

Wang, Wenjing, and Yiwei Liu. "Industrial Funding and University Technology Transfer: The Moderating Role of Intellectual Property Rights Enforcement." *The Journal of Technology Transfer* 47, no. 5 (2022): 1549–1572.

The authors analyze the effect of intellectual property rights enforcement on technology transfer between universities and the private sector. They conclude that stronger intellectual property rights positively correlate with increased private funding for academic research.

## Books

Rooksby, Jacob H., ed. *Research Handbook on Intellectual Property and Technology Transfer*. Northampton, MA: Edward Elgar Publishing, 2020.

This collection aims to provide an overview of the growing influence of intellectual property rights on higher education. The book is split into distinct parts covering the history of intellectual property and technology transfer in the academic industry, the current state of intellectual property rights in universities, and the global perspectives that can help to illuminate the path forward.

Link, Albert N., Donald S. Siegel, and Mike Wright, eds. *The Chicago Handbook of University Technology Transfer and Academic Entrepreneurship*. Chicago: University of Chicago Press, 2015.

This book takes a multidisciplinary approach to examining the burgeoning impact of intellectual property rights on universities and their approach to research funding. The collection includes perspectives from scholars in a diverse array of fields, including economics, sociology, psychology, business administration, law, public administration, and engineering.

## Legal (Protecting the Rights of Creators and Challenges, Litigation, etc.)

### Articles

Anderson, J. Jonas, and Paul R. Gugliuzza. "Federal Judge Seeks Patent Cases." *Duke Law Journal* 71, no. 2 (2021): 419–497.

Available at <https://scholarship.law.duke.edu/dlj/vol71/iss2/3/>.

The authors examine the increasing frequency of forum shopping and court competition in patent litigation cases, with a specific district court judge's actions utilized as an example of problems in the current system. Their proposed solutions to the issues include requiring random assignment of judges to cases and assigning venue based on specific division rather than court district.

Andriosopoulos, Dimitris, Pawel Czamowski, and Andrew Marshall. "Do Corporate Lawyers Matter? Evidence from Patents." *Journal of Corporate Finance* 83 (2023): 102473.

Available at [https://pure.strath.ac.uk/ws/portalfiles/portal/174327451/Andriosopoulos\\_etal\\_JCF\\_2023\\_Do\\_corporate\\_lawyers\\_matter.pdf](https://pure.strath.ac.uk/ws/portalfiles/portal/174327451/Andriosopoulos_etal_JCF_2023_Do_corporate_lawyers_matter.pdf).

The authors analyze the potential impact of experienced corporate patent attorneys on the value of those patents, utilizing the USPTO's Patent Examination Research Dataset. They conclude that the more capable and experienced the patent attorney, the greater the potential value of the patent portfolio.

De Rassenfosse, Gaétan, Paul H. Jensen, T'Mir Julius, Alfons Palangkaraya, and Elizabeth Webster. "Is the Patent System an Even Playing Field? The Effect of Patent Attorney Firms." *The Journal of Industrial Economics* 71, no. 1 (2023): 124–142.

Available at <https://onlinelibrary.wiley.com/doi/full/10.1111/joie.12319>.

The authors examine datasets from the largest patent examination offices, including those from Europe, Japan, South Korea, China, and the United States, in order to determine the impact of attorney quality on the probability of a patent being granted. They conclude that a higher quality has a significant positive correlation on the probability of the patent being granted, particularly by the USPTO.

Yang, Deli. "Patent Litigation Strategy and Its Effects on the Firm." *International Journal of Management Reviews* 21, no. 4 (2019): 427–446.

Available at <https://par.nsf.gov/servlets/purl/10130330>.

The author provides a framework for patent litigation strategies, with a particular focus on the different outcomes from settling or going to trial in the United States. The author concludes that private settlement frequently leads to more positive outcomes for the patent-holder than legal awards.

### **Books**

Heath, Christopher, Anselm Kamperman Sanders, and Anke Moerland, eds. *Intellectual Property Law and the Fourth Industrial Revolution*. Frederick, MD: Wolters Kluwer Legal & Regulatory, 2020.

This collection examines the effects of new technology and business methodologies on intellectual property law practice from multiple angles. Experts provide in-depth legal commentary on future changes to copyright, patent, and trademark law practice brought about by these new innovations.

### **Reports**

Helmets, Christian. *The Economic Analysis of Patent Litigation Data*. Geneva: World Intellectual Property Organization, December 2018.

Available at [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_econstat\\_wp\\_48.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_econstat_wp_48.pdf).

The author analyzes patent litigation data from the courts containing the largest patent litigation systems in the world, including in the United States, Japan, China, Germany, and others. He concludes that patent litigation has become increasingly controversial in the United States, in contrast to many of the other countries, and that further reform should be anticipated.

## **Approaches to Reform**

### **Articles**

Cahoy, Daniel R. "Trademark's Grip over Sustainability." *University of Colorado Law Review*, 94, no. 4 (2023): 1043–1100.

Available at <https://scholar.law.colorado.edu/lawreview/vol94/iss4/4>.

This law review article identifies trademark law as a potential deterrent to small firms and non-profits that may wish to enter the market for sustainable goods. The author proposes what he believes to be several modest legal reforms that are likely to curtail the threat of abusive litigation while preserving legitimate trademark enforcement.

Corrado, Sean M. "Care for a Sample? De Minimis, Fair Use, Blockchain, and an Approach to an Affordable Music Sampling System for Independent Artists." *Fordham Intellectual Property, Media and Entertainment Law Journal* 29, no. 1 (2019): 181–244. Available at <https://ir.lawnet.fordham.edu/iplj/vol29/iss1/1>.

Due to its popularity and legal licensing requirements, the author asserts that music sampling has become a lucrative market that has left some artists priced out. This article explores how the law and the marketplace have shaped the current sample licensing system and provides suggestions for creating a more affordable, efficient system by resolving musical composition licensing and sound recording licensing issues separately.

Freilich, Janet, Michael J. Meurer, Mark Schankerman, and Florian Schuett. "A New Approach to Patent Reform." Research Paper Series *Boston University School of Law, Boston*, no. 23–9 (2023).

Available at [https://scholarship.law.bu.edu/faculty\\_scholarship/3423](https://scholarship.law.bu.edu/faculty_scholarship/3423).

This working paper introduces a formal economics model of the patent system that provides a comprehensive understanding of how a policy change affects the system from beginning to end. After applying the model to several areas of patent law reform, the authors conclude that reforms such as the regulation of settlement licenses and increased examination intensity should be prioritized.

Goold, Patrick R. "Patent Accidents: Questioning Strict Liability in Patent Law." *Indiana Law Journal*, 95, no. 4 (2020): 1075–1135.

Available at <https://www.repository.law.indiana.edu/ilj/vol95/iss4/2>.

Goold argues that accidental patent infringement is a growing problem in the Information Age. The author says that under patent law, infringers are held strictly liable, which means they are liable regardless of whether the infringement was intentional. Noting that this standard contrasts with many areas of tort law where defendants are liable only if they act negligently, the author recommends reforming the liability rule in direct patent infringement by introducing a "patent negligence" defense.

Miller, Steven. "Repeal the Defend Trade Secret Act: Why Congress Can't Rely on Trade Secret Law to Protect America's Trade Secrets." *Journal of Intellectual Property Law* 28, no. 1 (2021): 213–250.

Available at <https://digitalcommons.law.uga.edu/jipl/vol28/iss1/9>.

This law student argues that the Defend Trade Secrets Act (DTSA) negatively affects employees and small businesses. After describing trade secret history and discussing the DTSA's major provisions and their interpretations by courts, the author argues that Congress should repeal the DTSA and focus on actual trade secret misappropriation actions that harm the competitive marketplace.

Morgan, Rachel. 2021. "Conventional Protections for Commercial Fan Art Under the U.S. Copyright Act." *Fordham Intellectual Property, Media and Entertainment Law Journal*, 31, no. 2 (2021): 514–573.

Available at <https://ir.lawnet.fordham.edu/iplj/vol31/iss2/4>.

Fan art is a type of content in which fans create their own artistic renditions of another artist's copyrighted characters. This article discusses the status of fan art as a derivative work under copyright law and some of the infringement issues that it raises. The author also discusses various proposed solutions for legalizing certain fan works, such as modifying the Copyright Act, fair use, and arguments under the First Amendment. The author also argues that courts should use art style as an indication of "transformativeness" in their fair use analysis.

New York Times Editorial Board. “Save America’s Patent System.” *New York Times*, (April 16, 2022).

Available at <https://www.nytimes.com/2022/04/16/opinion/patents-reform-drug-prices.html>.

This article points to high prescription drug costs to argue for reform and modernization of the USPTO. Toward that end, the writers propose five ways in which the USPTO can modernize to protect and promote innovation: 1) enforce existing standards, 2) improve the process for challenging bad patents, 3) eliminate potential conflicts of interest, 4) collaborate with other agencies, and 5) let the public participate.

Unrein, Eliza James. “No Equitable Relief: The Failings of the CASE Act to Protect Middle-Class Creatives from Copyright Infringement.” *William & Mary Business Law Review*, 14, no. 3 (2023): 695–728.

Available at <https://scholarship.law.wm.edu/wmblr/vol14/iss3/6>.

Unrein argues that the Copyright Alternative in Small-Claims Enforcement Act of 2020 (CASE Act), intended to provide an inexpensive dispute resolution process for small copyright claims, does not effectively protect middle-class creatives and small businesses. The author proposes that Congress amend the CASE Act to allow the Copyright Claims Board to grant permanent injunctive relief to plaintiffs in limited cases involving copyright infringement.

Wimberly, Emma K. “All the Internet’s a Stage: Reform of the Digital Millennium Copyright Act and Broadway’s Bootleg Problem.” *Georgia Law Review* 58, no. 1 (2023): 413–438.

Available at <https://digitalcommons.law.uga.edu/glr/vol58/iss1/10>.

This article reviews recommendations proposed by the U.S. Copyright Office in its May 2020 study of Section 512 of the Digital Millennium Copyright Act. The author addresses four of the Copyright Office’s recommendations for improving Section 512 that are relevant to combatting the online spread of bootleg recordings of Broadway performances. The article concludes that implementing changes to statutory language, as recommended by the Office, would be the most effective way to correct the imbalance between theatre rightsholders and online service providers.

## Books

Ghidini, Gustavo and Valeria Falce, eds. *Reforming Intellectual Property*. Cheltenham, UK: Edward Elgar Publishing, 2022.

This compilation brings together insights from scholars in the field of intellectual property from Europe, U.S., and China to provide diverse perspectives on the types of reforms that are needed. Topics include reforming non-traditional trademarks, expanding the research exemption and adding “fair use” protections for patent law, and a proposal for the creation of an International Intellectual Property Treaty, among others.

May, Randolph J. and Seth L. Cooper. *Modernizing Copyright Law for the Digital Age: Constitutional Foundations for Reform*. Durham: Carolina Academic Press, 2020.

Authors from the Free State Foundation, a free market think tank, provide recommendations for updating U.S. intellectual property law for the Digital Age. The authors argue that current law fails to protect copyrighted works from infringement enabled by modern-day technologies and that the law should be updated to curb the economic losses caused by bad actors in America and overseas.

Willinsky, John. *Copyright's Broken Promise: How to Restore the Law's Ability to Promote the Progress of Science*. Cambridge: Massachusetts Institute of Technology, 2023.

Open access advocate John Willinsky argues for reforming U.S. copyright law to ensure open access to research and scholarship. He focuses specifically on scholarly publishing, for which he proposes to add a new category to the Copyright Act. Under his proposal, a statutory licensing regime would allow publishers to receive royalty payments from universities and other institutional users and sponsors, with the goal of ensuring immediate and sustainable public access to research.

Wu, Michelle M. *Rebalancing Copyright: Considering Technology's Impact on Libraries and the Public Interest*. Getzville: William S. Hein & Co., Inc., 2021.

This book is divided into three sections: 1) History of Copyright and Libraries in the United States, 2) Working within Existing Copyright Structure, and 3) Re-envisioning Copyright. The second section argues for revisions to existing copyright law that would serve the public interest and proposes changes to copyright outside of legislation. The final section discusses broader reforms and imagines a new copyright environment with more balanced copyright laws.

## Reports

U.S. Copyright Office. *Section 512 of Title 17: A Report of the Register of Copyrights*. May 2020.

Available at <https://www.copyright.gov/policy/section512/section-512-full-report.pdf>.

This report by the U. S. Copyright Office is the first government study of the Section 512 “safe harbor” provision of the DMCA. It concludes that Section 512, which sought to balance the rights and responsibilities of online service providers (OSPs) with those of creators, has become unbalanced and has led to some results that do not appear to be aligned with Congress’ original intent. They detail their conclusions and recommendations in twelve areas to point out where Congress may seek to update section 512 in order to better balance the needs of OSPs and creators.

U.S. Library of Congress. Congressional Research Service. *Drug Pricing and Intellectual Property: The Legislative Landscape for the 117th Congress*, by Kevin J. Hickey and Erin H. Ward. R46741, March 31, 2021.

Available at <https://crsreports.congress.gov/product/pdf/R/R46741>.

This report asserts that while many other factors contribute to the cost of prescription drugs and biologics, IP rights are often among the most important factors. This report summarizes legislative proposals from the 116th Congress that concern these topics and classifies the proposals by legislative status and type.

U.S. Library of Congress. Congressional Research Service. *Patent-Eligible Subject Matter Reform: An Overview*, by Emily G. Blevins, Kevin J. Hickey. IF12563, 2024.

Available at <https://crsreports.congress.gov/product/pdf/IF/IF12563>.

Section 101 of the Patent Act names four categories of subject matter that are eligible to be patented. This report provides a high-level summary and analysis of recent developments from the federal courts and the USPTO regarding their interpretations of Section 101, as well as proposed congressional legislation to update the standards for patent-eligible subject matter.

## Websites

Authors Alliance. “Principles and Proposals for Copyright Reform.”

Available at <https://www.authorsalliance.org/principles-and-proposals-for-copyright-reform/>.

This webpage is hosted by a non-profit advocacy organization representing authors who believe that copyright law has been diverted from its Constitutional principles. It proposes four principles that should guide copyright law to better align the interests of creators with the interests of the public. The page links to an additional document in which the organization further explains its principles and proposed means for enacting them.

Copyright Alliance. “Issues & Policy.”

Available at <https://copyrightalliance.org/policy/>.

This webpage is hosted by a non-profit organization that represents the copyright interests of individual creators as well as institutional members. The Copyright Alliance represents these members’ interests before Congress, government agencies, the courts, and other policymakers. This webpage includes statements made to Congress, comments filed with the U.S. Copyright Office and other government agencies, amicus briefs filed in court cases, and position papers that explain the organization’s views on copyright-related topics.

## U.S. GOVERNMENT INFORMATION RESOURCES

**This section of the bibliography was compiled by the U.S. Government Publishing Office Library Services and Content Management.**

“Resolved: The United States Federal government should significantly strengthen its protection of domestic intellectual property rights in copyrights, patents, and/or trademarks.”

The U.S. Government Publishing Office offers two major resources for discovering Government information, the Catalog of U.S. Government Publications (CGP) and GovInfo.

**<https://catalog.gpo.gov>**

The Catalog of U.S. Government Publications is the finding tool for information products published by all three branches of the U.S. Government. It includes descriptive information for current and historical publications as well as direct links to full-text documents, when available. The catalog also offers the option to locate a nearby Federal depository library that has a particular publication or that can provide expert assistance in finding and using related U.S. Government information.

There are multiple ways to search for publications in the CGP. For detailed guidance on searching, please visit the Help page at <https://catalog.gpo.gov/cgphelp/en/help.html>.

Follow these steps to start your search for freely available online publications on the debate topic:

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3. In the “Search for word/’phrase’ in...” box, select “Internet access” in the first drop down menu.
4. In the “Enter word/’phrase’” box, enter the value “https?”
5. In the next drop-down menu boxes, start entering keywords relevant to your search.
6. Please explore other search options described on the Help page.

**<https://www.govinfo.gov>**

GovInfo provides free public access to official publications from all three branches of the Federal Government. In addition to providing an advanced,

metadata-powered search experience, GovInfo also includes a content management system and a standards-compliant preservation repository.

For detailed guidance on how to search GovInfo, please visit the Finding Information page at <https://www.govinfo.gov/help/finding-info>.

**Below are a sample of publications from GovInfo and the CGP:**

Intellectual property: stronger fraud risk management could improve the integrity of the trademark system: report to congressional committees

Publisher: Government Accountability Office

Year/Pages: 2024; iii, 64 pages

Available at: <https://purl.fdlp.gov/GPO/gpo223491>

Digital copyright piracy: protecting American consumers, workers, and creators: hearing before the Subcommittee on Courts, Intellectual Property, and the Internet of the Committee on the Judiciary, U.S. House of Representatives, One Hundred Eighteenth Congress, first session, Wednesday, December 13, 2023

Publisher: U.S. Government Publishing Office

Year/Pages: 2024; iv, 68 pages

Available at: <https://purl.fdlp.gov/GPO/gpo223372>

Five years later: the Music Modernization Act: hearing before the Subcommittee on Courts, Intellectual Property, and the Internet of the Committee on the Judiciary, House of Representatives, One Hundred Eighteenth Congress, first session, Tuesday, June 27, 2023.

Publisher: U.S. Government Publishing Office

Year/Pages: 2023; iv, 76 pages

Available at: <https://purl.fdlp.gov/GPO/gpo218275>