

PRESENTS



EMPIRICAL IP RESEARCH CONFERENCE

OCTOBER 24 - 25, 2014
NYU SCHOOL OF LAW



INNOVATION LAW & POLICY
EMPIRICAL RESEARCH INITIATIVE



network: nyuguest
username: guest110
password: inictol



FRIDAY, OCTOBER 24 | MORNING SESSION

8:30 AM - 9:00 AM **BREAKFAST**

9:00 AM - 9:30 AM **INTRODUCTION AND PROCESS OVERVIEW**

Jeanne Fromer, Chris Sprigman, Katherine Strandburg (NYU)

9:30 AM - 11:15 AM **PLENARY SESSION**

How Do Patents Affect Innovation?

Facilitator: Katherine Strandburg (NYU)

In 1958, economist Fritz Machlup famously concluded that “none of the empirical evidence at our disposal” “either confirms or confutes the belief that the patent system has promoted the progress of the technical arts and the productivity of the economy.” Can we say more than that today about the causal relationship between patenting and innovation? What can modern econometric and experimental approaches tell us about the effects that patenting has on the amount and direction of innovation? This panel will discuss several recent empirical articles relating to the impact of patents on innovation and consider the strengths and weaknesses of various approaches to the question.

Heidi Williams (MIT Department of Economics)

Measuring the Effects of Patents on Downstream Innovation

Commenting on: Alberto Galasso & Mark Schankerman, *Patents and Cumulative Innovation: Causal Evidence from the Courts*

Stefan Bechtold (ETH Zurich)

The Effects of Patents on Scientific Research

Commenting on: Bhaven Sampat & Heidi L. Williams, *How Do Patents Affect Follow-On Innovation? Evidence from the Human Genome*

Michael Meurer (Boston University)

Non-Patent Measures of Innovation

Commenting on: Petra Moser, *Patents and Innovation: Evidence from Economic History*

Petra Moser (Stanford Department of Economics)

Measuring the Effects of Patents on Private Incentives

Commenting on: James Bessen et al., *The Costs and Benefits of United States Patents*

11:15 AM - 11:30 AM **BREAK**



FRIDAY, OCTOBER 24 | MORNING SESSION

11:30 AM - 12:30 PM BREAKOUT SESSIONS

Session 1: Innovation Metrics

Patent counts and related metrics are easily available and are commonly used to measure innovation by empirical researchers, policymakers and governments. Patents-based metrics are problematic, however, for several reasons, including the difficulty in quantifying the amount of innovation represented by a patent and the exclusion of a likely large amount of unpatented innovation. This breakout session will discuss what alternatives are currently available and what data would be needed to do a better job of measuring innovation so that policymaking can be better informed.

Facilitator: Colleen Chien (Senior Advisor to the CTO, Intellectual Property and Innovation, White House Office of Science and Technology Policy)

Session 2: Studying the Causal Question Using Experiments, Surveys, and Qualitative Research

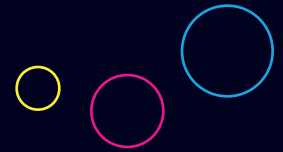
This session will focus on generating ideas about ways in which experiments, surveys, and qualitative approaches such as case studies can contribute to our understanding of the causal links between patenting and innovation. In particular, the session will consider how these empirical approaches might shed light on the question of which, rather than how much, innovation results from the patent system.

Facilitator: Michael Burstein (Cardozo)

12:30 PM - 2:00 PM LUNCH & KEYNOTE

Colleen V. Chien

Senior Advisor to the CTO, Intellectual Property and Innovation
White House Office of Science and Technology Policy



FRIDAY, OCTOBER 24 | AFTERNOON SESSION

2:00 PM - 3:45 PM

PLENARY SESSION

Measuring Consumer Confusion in Trademark Infringement

Facilitator: Barton Beebe (NYU)

Trademark law is designed to promote competition by preventing consumer confusion as to the source of goods and services. As such, the key question in trademark infringement cases is whether the defendant's use is likely to confuse consumers. There have been various approaches to measuring consumer confusion, such as through surveys, through collection of natural data, and through cognitive modeling. Moreover, there are different types of confusion that consumers can experience beyond the garden variety, including initial-interest confusion and post-sale confusion. Some scholars argue that not all consumer confusion is relevant to whether trademark infringement ought to be found. This panel will address different empirical approaches to measuring consumer confusion and which sorts of consumer confusion ought to have legal salience.

Joel Steckel (NYU Stern School of Business)

Consumer Confusion Surveys Used in Litigation

Commenting on: Robert H. Thornburg, *Trademark Surveys: Development of Computer-Based Survey Methods*

Lisa Larrimore Ouellette (Stanford)

Cognitive/Psychological Approaches to Modeling When and How Consumers Get Confused

Commenting on: Thomas R. Lee et al., *An Empirical and Consumer Psychology Analysis of Trademark Distinctiveness*; Thomas R. Lee et al., *Trademarks, Consumer Psychology, and the Sophisticated Consumer*

Mark McKenna (Notre Dame)

Qualitative Studies of Consumers Becoming Confused During Shopping

Commenting on: G. Miaoulis & N. D'Amato, *Consumer Confusion and Trademark Infringement*; Vincent-Wayne Mitchell & Vassilios Papavassiliou, *Exploring Consumer Confusion in the Watch Market*

Rebecca Tushnet (Georgetown)

Big Data Approach to Consumer Confusion

Commenting on: Lisa Larrimore Ouellette, *The Google Shortcut to Trademark Law*; Stefan Bechtold & Catherine Tucker, *Trademarks, Triggers and Online Search*

3:45 PM - 4:00 PM

BREAK



FRIDAY, OCTOBER 24 | AFTERNOON SESSION

4:00 PM - 5:00 PM BREAKOUT SESSIONS

Session 1: Trademark Dilution

Dilution protects against use of a trademark in a way that decreases the mark's uniqueness, irrespective of consumer confusion. This session investigates how to define and measure dilution and whether dilution can have negative effects on competition.

Facilitators: Irina Manta (Hofstra) & Jeremy Sheff (St. John's)

Session 2: Counterfeiting and Its Effect on the Market for the Genuine Article

There is debate as to what effect counterfeit products have on the market for the genuine article, ranging from harmful effect to no effect to positive impact. Related is the issue of post-sale confusion experienced not by consumers, but by third parties. This session investigates how to measure the effects of counterfeiting on consumer demand for and attitudes toward genuine products.

Facilitator: Scott Hemphill (Columbia; Visiting Professor, NYU)

5:30 PM

DINNER

Greenwich Project

47 West 8th Street (between 6th Avenue & MacDougal Street; Upstairs Room)





SATURDAY, OCTOBER 25 | MORNING SESSION

9:30 AM - 10:00 AM **BREAKFAST**

10:00 AM - 11:45 AM **PLENARY SESSION**

Effect of Copyright Infringement on Creative Incentives

Facilitator: Chris Sprigman (NYU)

The question of how copyright infringement affects incentives to create is, of course, closely related to the issue of how infringement affects industry output. This panel is focused on individual creator incentives, particularly with regard to “pioneer” creator incentives, and on the incentives of follow-on creators or “tweakers.”

Joel Waldfoegel (Minnesota Carlson School of Management)

The strengths and limits of the natural experiment methodology to explore the effects of piracy on both industry output and creative incentives

Commenting on: Brett Danaher & Michael Smith, *Gone in 60 Seconds: The Impact of the Megaupload Shutdown on Movie Sales*; Christian Peukert et al., *Piracy and Movie Revenues: Evidence from Megaupload. A Tale of the Long Tail?*

Christopher Buccafusco (Chicago-Kent)

Translating Piracy’s Effect on Sales into Piracy’s Effect on Creative Incentives

Commenting on: Brett Danaher & Michael Smith, *Gone in 60 Seconds: The Impact of the Megaupload Shutdown on Movie Sales*; Christian Peukert et al., *Piracy and Movie Revenues: Evidence from Megaupload. A Tale of the Long Tail?*

Peter DiCola (Northwestern)

Generalizability of Studies in One Creative Industry

Commenting on: Rahul Talang & Joel Waldfoegel, *Piracy and New Product Creation: A Bollywood Story*; Joel Waldfoegel, *Copyright Protection, Technological Change, and the Quality of New Products: Evidence from Recorded Music Since Napster*

Pamela Samuelson (UC Berkeley)

Relevance of Empirical Research to Policymakers

National Academies of Science, *Copyright in the Digital Era: Building Evidence for Policy*

11:45 AM - 12:00 PM **BREAK**



SATURDAY, OCTOBER 25 | MORNING SESSION

12:00 PM - 1:00 PM BREAKOUT SESSIONS

Session 1: Alternative Inquiries Into the Effect of Copyright Infringement on Creative Incentives

Our panel on the effect of copyright infringement on creative incentives features papers that all broadly use a natural experiment methodology. This breakout session will consider whether similar questions may be explored using experimental and qualitative empirical methodologies.

Facilitators: Orly Lobel (San Diego) & Jessica Silbey (Suffolk)

Session 2: Investigating Copyright Infringement Standards

There is a small movement in IP legal scholarship to use behavioral economics literature to explore how copyright's substantial similarity standard works in application—and how the standard may produce unexpected results in a variety of cases. But there is a lot of work yet to do to substantiate the hypotheses offered in these papers, and to understand better how judges and juries assess substantial similarity in real disputes. This breakout session will explore how empirical researchers should approach these questions using a variety of methodologies.

Facilitators: Ben Depoorter (UC Hastings) & Paul Heald (Illinois)

1:00 PM - 2:30 PM LUNCH & REPORTING PLENARY