

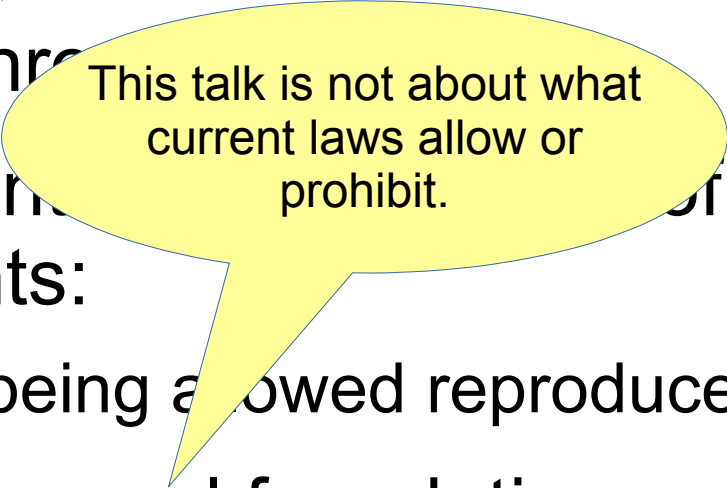
# Intellectual Property

# Motivation

- “Normal” property rights are well established
- Intellectual property *rights* often postulated
- Patents, copyright, trade secrets
- Enforced through laws
- Enforcement deprives others of some of their “other” rights:
  - E.g., not being allowed reproduce something you own
- Laws need moral foundation

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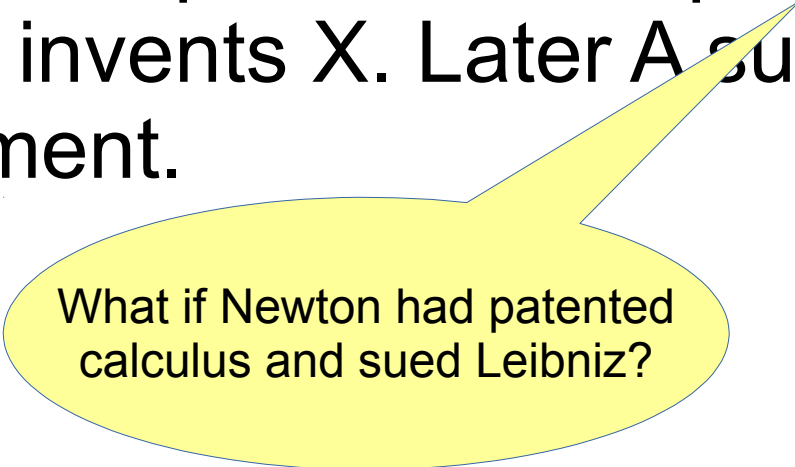
This talk is not about what current laws allow or prohibit.

# Comparison to “other” property

- Property: right to control a scarce resource
- IP: intellectual works are not scarce
- Property: others can be excluded from using it
- IP: one cannot prevent others from having same idea.
- Example: A invents procedure X, patents it. B simultaneously invents X. Later A sues B for patent infringement.

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What if Newton had patented calculus and sued Leibniz?

# Approaches to justifying IP

- Utilitarian arguments
  - Having IP rights maximizes “social utility”
- Personality-based justification
  - Created works are an extension of one's personality
  - Protection against slander / damage to one's reputation
- Lockean justification
  - Ownership of the fruits of one's labor

# Utilitarian defense of IP

- Example: pharmaceutical companies
  - Large investments needed to develop new drug
  - Without patents: why not wait and copy rivals' drugs
- Three premises:
  - 1) Maximization of “social utility” justifies a system
  - 2) IP rights necessary for creation of intellectual works
  - 3) Promoting intellectual works maximizes social utility
- Conclusion: IP rights should be enforced

# Problems of utilitarian IP arguments

- Usual arguments against utilitarian systems apply; inconsistent with rest of society
- Impossible to define “social utility”
- IP rights never proven to be necessary:
  - Alternative systems might do better (e.g. rewards for authors and inventors)
  - *No evidence* that patents increase innovation
  - Enormous costs (patent lawsuits); *no evidence* that patents produce a net gain



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Some studies show the opposite:

<http://stlr.org/archived-volumes/volume-x-2008-2009/torrance/>

# Utilitarian alternative to IP: rewards

- Social utility could be maximized without IP rights:
- Inventors get rewarded for “successful” inventions (e.g. based on sales)
- Inventions and art enter public domain
- Payed from government funds
- Problem: forces everyone to pay for every successful creative work (cf. pop music)
- Question: Would this be a good system?
- Question: Would you be willing to pay for it?

# Personality-based approaches

- Property as sphere of freedom for human activity
- Premise: one owns their personality, traits
- Premise: intellectual works contain one's traits, personality; e.g. literature, art, etc.
- Conclusion: ownership-like rights for intellectual works
- Others could damage your reputation if your works are not protected

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No justification for full property rights

# Locke's view on labor and property

- Based on John Locke's justification of property rights
- People “own” their labor
- An unowned object becomes owned by someone “mixing their labor” with it
- Lockean proviso: “...at least where there is enough, and as good, left in common for others.”
- Proviso hard to argue for in real world



# Lockean justification for IP

- Intellectual works are the result of someone's labor
- Does not require scarce resources
- Lockean proviso appears to be satisfied
- Intuitive, since proviso leaves little room for rational complaint
- Moore: proviso can be changed to require pareto-superior result

# Problems with Lockean IP rights

- Unclear if appropriating an idea does not leave less for others:
  - Others can no longer use that idea, even if independently discovered
  - Depends on point of comparison: if idea is public domain, others are better off than with IP protection
- Does a second person mixing their labor with someone else's work grant them property rights?
- Fixed proviso assumes fixed notion of “better”

# A world without copyright?

- Limited protection for creators could be created through contracts
- Buyer agrees not to redistribute or copy something he purchases
- Avoids issues with having IP rights as a moral principle
- Prevents patent trolls, lawyers making money of copyright litigation
- Can't protect key features of a larger product

# A world without copyright?

- Limited protection for creators could be created through contracts
- Buyer agrees not to redistribute or copy something he purchases
- Avoids issues with viewing IP rights as a moral principle
- Prevents copyright infringement  
Would you buy creative works under such conditions?  
Maybe this would force vendors to offer better terms?
- Can't protect key features of a larger product

# Questions

- Do you think the concept of Intellectual Property is justified? Necessary?
- If not: Does someone who downloads something have the responsibility to check if the uploader acquired permission to share it?
- Are there other ways to justify IP? How about deontic approaches (respecting others creativity)?

# References

- “Personality-Based, Rule-Utilitarian, and Lockean Justifications of Intellectual Property” by Adam D. Moore  
(from “The Handbook of Information and Computer Ethics”)
- “Against Intellectual Property” by N. Stephan Kinsella