

Intellectual Property and the Incentive Fallacy

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The enterprise of intellectual property law has long been based on the premise that external incentives – such as copyrights and patents – are necessary to get people to produce artistic works and technological innovations. This article argues that this foundational belief is wrong. Using recent advances in behavioral economics, psychology, and business-management studies, along with empirical investigations of industry, it is now possible to construct a compelling case that the incentive theory, as a general matter, is mistaken, and that natural and intrinsic motivations will cause technology and the arts to flourish even in the absence of externally supplied rewards. The result is that intellectual property law itself needs a fundamental rethinking.