

## *Undefined Markets in IP Cases*

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Antitrust is understood to depend on market definition. But IP regimes do so as well – we can't determine market harm in copyright, whether a product feature is aesthetically functional or consumers are likely to be confused in trademark law, or what profits a patentee lost because of the defendant's conduct without engaging in market definition. Antitrust has recently been criticized for overreliance on formal means of defining markets. In IP, the problem is the opposite: we often don't even acknowledge that we are drawing difficult, but outcome determinative, lines between markets. We aim in this paper to surface the market definition issue and to consider the implications of different methodologies for defining markets in a variety of IP contexts.