

Information & Inefficiency

**Presentation to IPSC 2025
August 7, 2025**

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Potential subtitles for *Information & Inefficiency*

1. *Trade Secrets as Anti-Intellectual Property*
2. *Are Trade Secrets Making Markets Inefficient?*
3. *Do Trade Secrets Fail As Intellectual Property?*
4. *Should Law-and-Econ Proponents Join the Trade Secrecy Skeptics Club?*

[further brainstorming welcome!!]

Questions I'm stuck on

- If we take seriously utilitarian, law-and-economics justifications for intellectual property, then we should we be skeptical of trade secrecy?
- Should we at least be skeptical of trade secret claims in information on the **price** and **properties** of information and goods and services in our economy and society?
- Is it possible that trade secrecy law is today discouraging production and dissemination of **information on the value of information**—information that should be guiding the information production of the future?



Under Construction

Work Information & Inefficiency **builds on (but distinguishes itself from)**

16 The impact of trade secrecy on public
transparency

*David S. Levine**

Diversity as a Trade Secret

JAMILLAH BOWMAN WILLIAMS*

From Trade Secrecy to Seclusion

CHARLES TAIT GRAVES* & SONIA K. KATYAL**

ARTICLE

**Life, Liberty, and Trade Secrets:
Intellectual Property in the
Criminal Justice System**

Rebecca Wexler*

THE PROMISE AND PERILS
OF TECH WHISTLEBLOWING

Hannah Bloch-Wehba

Attempting an “endogenous” critique of trade secrecy doctrine

- Does trade secrecy law succeed or fail, from the perspectives of the stakeholders centered in dominant utilitarian theories of intellectual property law—inventive companies, their competitors, their investors, and their customers?
- What if trade secrecy benefits inventive companies but *harms* competitors, investors, and customers? Does trade secrecy then fail *as* intellectual property?

INFORMATION AND EFFICIENCY: ANOTHER VIEWPOINT*

HAROLD DEMSETZ
University of Chicago

The last assertion in the above quotation from Arrow's paper, "In a free enterprise economy, inventive activity is supported by using the invention to create property rights; precisely to the extent that it is successful, there is an underutilization of the information," does not constitute an argument against the creation of property rights. The indivisibility problem may very well be handled best by a private property system that reduces the cost of contracting and raises the cost of free-loading while, at the same time, it provides incentives and guidance for investment in producing information.

Benkler's paraphrase of Demsetz: Intellectual property's “signaling effect”

Yochai Benkler has called Demsetz's second justification for intellectual property IP's “signaling effect,” “whereby consumers signal producers what innovations or information goods are most valuable.”

Yochai Benkler, *Intellectual property and the organization of information production*, International Review of Law and Economics, Volume 22, Issue 1, 2002.





FEDERAL TRADE COMMISSION

THE EVOLVING IP MARKETPLACE

ALIGNING PATENT NOTICE AND REMEDIES WITH COMPETITION

MARCH 2011

II. THE MARKET ALIGNS REWARD AND CONTRIBUTION THROUGH COMPETITION

An important benefit of the patent system, in contrast to other methods of encouraging innovation, like direct prizes, is that it allows each invention to be valued directly through a

market mechanism.² A patentee can obtain a financial reward for its patent by producing a product that incorporates the invention or by transferring the technology through a patent license or sale to a manufacturer who develops and produces a product. The market reward³ earned by the patentee in either case will depend upon the extent to which consumers prefer the patented invention over alternatives and prior technology, which helps determine the invention's economic value.



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If, somehow, we knew how much and what types of information it would be desirable to produce, then we could administer production independently of the distribution of any given stock of information. But we do not know these things. Arrow's assertion that "[i]n an ideal socialist economy, the reward for invention would be completely separated from any charge to the users

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How to test the thesis that trade secrecy claims in prices and properties are hindering efficient markets?

- How important, how common, are trade secrecy claims in the *prices* of goods and services? In *properties*?
- What about trade secrecy claims in the prices of other IP rights—copyrights and patents especially? E.g., trade secrecy claims over prices paid in sales and licenses of copyrights and patents?
- To what extent are consumer and capital markets hindered by lack of ready access to this information?

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Musk's Tesla seeks to guard crash data from public disclosure

By Mike Scarcella

June 4, 2025 6:18 PM EDT · Updated June 4, 2025

SCREEN TIME

MAR. 5, 2024

The Self-Driving Car Bubble Has Popped



By John Herrman, a tech columnist at *Intelligencer* ▾

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October 4, 2024 Safety

OpenAI's Raising Concerns Policy

We're publishing our Raising Concerns Policy, which protects employees' rights to make protected disclosures.

Apollo's chief economist warns the AI bubble is even worse than the 1999 dot-com bubble

BY **CHRIS MORRIS**
CONTRIBUTING WRITER

July 17, 2025 at 11:46 AM EDT



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WHAT'S VALUE IN HEALTH CARE? POWERFUL COMPANIES MAKE IT HARD TO KNOW

CHRISTOPHER MORTEN

FIRST OPINION

Manufacturers need to be more open about a dangerous Alzheimer's drug side effect

By Madhav Thambisetty Nov. 28, 2023

[Reprints](#)

How the 'amyloid mafia' took over Alzheimer's research

One idea has driven Alzheimer's treatment — but to whose benefit?

By Charles Piller — Science Feb. 11, 2025

Piller is an investigative journalist for Science.

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A Case Study In Patent Litigation Transparency

*Bernard Chao and Derigan Silver**

“[M]any patent trials . . . often contain mountains of sealed exhibits.”¹



World ▾ Business ▾ Markets ▾ Sustainability ▾ More ▾

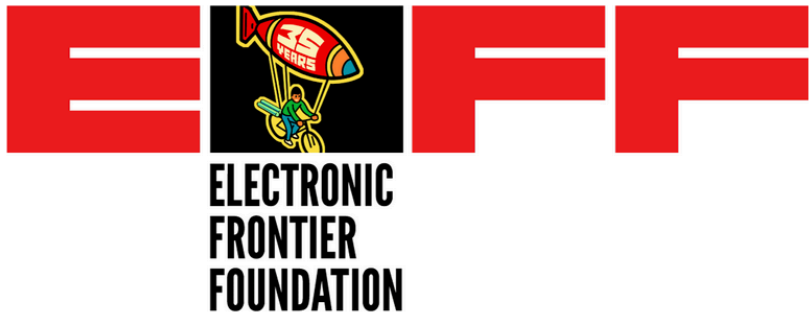
My I

Apple, patent foe urge court to keep license terms secret in smartphone case

By Blake Brittain

December 6, 2021 3:53 PM EST · Updated December 6, 2021





EFF Presses Federal Circuit To Make Patent Case Filings Public

BY TORI NOBLE AND AARON MACKEY | AUGUST 14, 2024

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- Is this proposed paper interesting? Coherent? Plausible? Remotely useful?
- What literature am I missing?
- What evidence should I explore to test the claim that assertion of trade secrecy in prices and properties are hindering efficient markets?
- To the extent the claim is true, what prescriptions should flow?

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governmental institutions that are suggested as replacements for the market.

I have stated elsewhere what I believe to be the basic problem facing public and private policy: the design of institutional arrangements that provide incentives to encourage experimentation (including the development of new products, new knowledge, new reputations, and new ways of organizing activities) without overly insulating these experiments from the ultimate test of survival. In the context of the problems discussed in Arrow's paper, these institutional arrangements must strive to balance three objectives. A wide variety of experimentation should be encouraged, investment should be channeled into promising varieties of experimentation and away from unpromising varieties, and the new knowledge that is acquired should be employed extensively. No known institutional arrangement can simultaneously maximize the degree to which each of these objectives is achieved. A difficult-

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