

*Employee Creativity: To Promote the Progress of Science and Useful Arts
in the Firm*

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Granting exclusive rights in the fruits of intellectual labor provides creator incentives and promotes innovation. So goes the dominant, utilitarian account of intellectual property.

But this account largely ignores a crucial fact. Most innovative behavior today is not undertaken by independent creators hoping to win an intellectual property prize. Instead, it takes place in companies and other organizational settings. It is performed by employees, who, under current intellectual property doctrines, most likely will never hold a valid claim to exclusive rights in their work.

Given this reality, it is critical for a robust innovation policy to understand what motivates people in organizations to act in innovative and creative ways. What kinds of environments, incentives, and managerial behaviors encourage workplace creativity and innovation? Hinder them? Is money an effective motivator? Or are other types of incentives more effective? Drawing on empirical research in organizational behavior and psychology, this Article attempts to answer these questions.

Equally crucial is an understanding of how we as a society can ensure that organizations are providing appropriate innovation incentives to their employees. This Article explores how we might accomplish this. While intellectual property is one potential approach, it is certainly not the sole—or even necessarily the best—one. For a number of reasons, I argue that private ordering may often be expected to arrive at effective solutions. But I also contend that intellectual property law can supplement the private ordering regime by championing and advancing norms consistent with empirical behavioral research. And when private ordering fails, I assert that labor and employment law can fill the gaps and help ensure that employees—the primary drivers of innovation today—receive optimal creative incentives.