

IP as Charity

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Intellectual property and charity law are generally considered distinct and unrelated bodies of law. But in some respects, they are similar and complementary. Specifically, patent, copyright, and charity law are all intended to increase social welfare by solving market and government failures in public goods caused by free riding and transaction costs. Patent solves market failures in innovation by providing an indirect subsidy to marginal innovators, copyright solves market failures in works of authorship by providing an indirect subsidy to marginal authors, and charity law solves market failures in charitable goods by providing an indirect subsidy to marginal donors. In fact, innovation and works of authorship are categories of charitable goods. The “warm glow” of altruism includes the drive to innovate and create works of authorship. But patent, copyright, and charity law solve market and government failures in innovation and works of authorship in complementary ways. Patent and copyright efficiently reduce ex ante transaction costs, but increase ex post transaction costs. Charity law reduces both ex ante and ex post transaction costs. Accordingly, the efficient scope and duration of copyright should depend on ex ante transaction costs, because charity can more efficiently reduce ex post transaction costs, especially as the introduction of new social technologies like crowdfunding further reduces transaction costs associated with charitable contributions.